APPENDIX A

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR POLK COUNTY

SEPTEMBER TERM, 1965

ELIZABETH KRUIDENIER, et al,
Plaintiffs,
vs.
W. E. McCULLOCH, et. al,
Defendants.
} **Equity No. 70685**

Findings of Fact and Conclusions of Law and Decree

This matter came on before the Court for trial upon the petition of the plaintiffs and the counter-claim of the defendants. Plaintiffs bring this proceeding as a class action. They are citizens and voters of Cedar, Chickasaw and Polk Counties, Iowa; one, a State Senator, another a State Representative. Defendants are public officials charged with duties relative to elections in Iowa. The plaintiffs appeared by their attorneys, Herrick, Langdon, Sandblom and Belin; and defendants appeared by their attorneys, Lawrence F. Scalise, Attorney General of Iowa and Timothy McCarthy, Solicitor General of Iowa. The matter was fully tried, and the Court, having heard the evidence and arguments of counsel and being fully advised in the premises, makes the following findings of fact, conclusions of law and decree.

Many issues are raised by plaintiffs' petition. Not the least troublesome problem in considering plaintiffs' allegations is the fact that over the past three years a Three Judge Federal Court has already adjudicated many of the issues now being raised in this Court. Further complicating the decision is the time factor. Two legislative apportionment schemes have already been found unconstitutional under the 14th Amendment to the United States Constitution by the Three Judge Federal Court. The first determination has been appealed to the United States Supreme Court and affirmed. The second determination found the present legislative apportionment prospectively invalid.

The Governor of Iowa called a special session of the Iowa legislature in response to the order of the Federal Court. A plan of apportionment was enacted in conformance to the Court order. When the U. S. Supreme Court decided further population consideration was required in both houses of a bicameral state legislature in Reynolds v. Sims, 377 U.S. 533, 84 Supreme Court 1362, the Three Judge Federal Courts' decision in ordering a further population factor in the Iowa Senate was complied with in the 1965 Iowa legislature.

These apportionment events in Iowa have taken place in an orderly manner over the past three years with what this Court believes is an admirable restraint being shown by all three branches of our government, judicial, executive and legislative in staying within the bounds of their historical and constitutional authorities. All three branches of our governmental structure have acted in good faith and in reliance upon such Court decisions and legal advice as were available to them.

There can be little argument that if population must be a major consideration in apportioning the Iowa Legis-

lature, as the United States Supreme Court has decreed, great strides have been made in this direction through the action of the 1964 and 1965 sessions of the Iowa legislature.

The practical effect, if plaintiffs are to prevail, would be to scrap all legislative apportionment progress accomplished to date and to start anew with standards under the Iowa Constitution and the U. S. Constitution as construed by the plaintiffs. This Court is sitting as a Court of Equity. As such, it must be fully cognizant of the enormous expense to the State of Iowa to date in arriving at the present apportionment with the 1964 special session and with the lengthy 1965 session which spent much time in considering apportionment legislation. If plaintiffs' views are to be upheld, another expensive special session would be contemplated together with the expenses of special elections necessary to fill numerous vacancies which have developed in the makeup of the legislature since it adjourned. Coupled with the expense factor is the nature of the alleged "mischief" to be corrected by the proposed adoption of admitted alternate constitutional constructions from those taken by the Three Judge Federal Court. It is inconceivable to this Court that any great harm will come to any Iowa citizen by a 61 member senate rather than a 50 member senate.

The second alleged "mischief" which the plaintiffs wish to correct is that of elections at large within a multi-representative county. The Court concedes that there are eminent political scientists, politicians, legislators and much of the Iowa press that insist that subdistricting of counties is necessary for fair apportionment. However, not everyone agrees with them, and the duty of this Court is not to count noses on this issue, but rather to determine (1) Whether the Iowa Constitution prohibits such subdis-

tricting, and (2) The constitutionality of such a provision prohibiting subdistricting, if there is one. These legal contentions will be discussed at length in this decision. The reason for this preliminary review by the Court is to document its feeling that the 1965 legislative apportionment should be found unconstitutional, if at all, only for the most compelling reasons. To do less would be a disservice to the people of Iowa.

Reapportionment legislation is not easy legislation for a legislature. It has been compared in difficulty with a person taking out his own appendix.

In reading the apportionment decisions of the Three Judge Federal Court, due deference to the legislative branch of the government and an intimate knowledge of its problems was patently evident. A decision by this Court that would place the legislature in the position of starting all over again would certainly risk wide spread political repercussions. It could cause a special session replete with lengthy wrangling and the possibility and even probability of no agreement which would leave apportioning either to this Court or an alternative of an at large state-wide election for the legislature. These extreme alternatives have not worked well in other states, and there is no indication that they would work any better in Iowa.

In detailing the equitable principles which have been considered by this Court in arriving at decision, the Court has given great weight to the timeliness of plaintiffs' suit. As pointed out by Justice Thornton of the Iowa Supreme Court in the earlier appeal herein and by Justice McManus in his recent dissent in the Three Judge Court's decision to defer to this Court on certain apportionment problems, these plaintiffs sat by for over two and a half

years while apportionment action was pending in the courts. They were well aware of the decisions being made and that two sessions of the Iowa legislature had relied on such decisions. That in this conjunction, plaintiffs could have intervened in the federal apportionment suit at any earlier time to urge the positions they now maintain.

With this record of dilatory action by plaintiffs, this Court feels strongly that as a matter of equity, plaintiffs should be held strictly to their burden of proving all their allegations by a clear preponderance of the evidence and to demonstrate any alleged unconstitutionality in such a manner as to negative any theory under which this Court might find the legislation under attack to be constitutional.

Finally, the evidence shows the proposed permanent constitutional plan of apportionment passed for the first time by the 1965 legislature does provide for a 50 member senate and for permissive subdistricting so that the complaints underlining plaintiffs' petition are even now started on their way to correction. This would be accomplished in the manner contemplated by the Iowa Constitution by a constitutional amendment being passed twice by the legislature in identical form and then being approved by a vote of the people.

It is within this framework of equitable principles that the Court has considered the various divisions of plaintiffs' petition and defendants' counter-claim. Each will be discussed briefly in turn to be followed by this Court's findings of fact and conclusions of law which are the basis for the decisions of the Court.

PLAINTIFFS' DIVISION I

Plaintiffs contend that the present 1964 temporary apportionment of the Iowa legislature should be declared invalid under the Bill of Rights of the Constitution of the State of Iowa. Defendants deny this allegation and further contend the issue is moot since the Three Judge Federal Court has already held the 1964 apportionment prospectively invalid.

The Court agrees with the defendants that any question of the constitutionality of the 1964 temporary apportionment plan is moot since the plan is already declared invalid under federal constitutional standards.

Since the Court finds the basic issue raised a moot one, there is no necessity to discuss the alleged reasons for further unconstitutionality advanced by plaintiffs.

PLAINTIFFS' DIVISION II

Plaintiffs contend that the present (1964) temporary apportionment of the Iowa legislature should be declared invalid because it is in violation of Section 1 of the Equal Protection Clause of the 14th Amendment of the Constitution of the United States.

Defendants deny this allegation and maintain that this is a moot issue since in February of 1965 the Three Judge Federal Court found the 1964 apportionment plan in violation of this section of the United States Constitution.

Since the basic question is moot, there is no need to consider other issues alleging further unconstitutionality raised by the plaintiffs.

PLAINTIFFS' DIVISIONS III AND V

These Divisions correspond to plaintiffs' Division I except that they attack the 1965 temporary or statutory apportionment plan for these reasons: (1) That it violates Article I of the Iowa Bill of Rights (2) That it provides for more than 50 senators (3) The population of the Polk County District is more than 19 times larger than that of Monona County District (4) The plan does not provide for subdistricting (5) The plan, because of lack of subdistricting, does not have a uniform operation among the districts with reference to number of representatives, population of districts, and length of ballot (6) Lack of subdistricting causes further lack of uniform operation since it encourages block voting, makes campaigning difficult, submerges minorities, and makes contact between legislators and constituents difficult.

Defendants deny these allegations.

Plaintiffs in this Division are attacking, as is certainly their perogative, the 1965 temporary apportionment because it allegedly violates the Iowa Constitution. First is the contention that the Three Judge Federal Court erroneously found Sections 34, 35 and 36 of Article III of the Iowa constitution unconstitutional in their entirety, rather than severing or reviving therefrom the 50 senator limitation. This Court holds that the Three Judge Federal Court was deciding a federal question (violation of the 14th Amendment of the U. S. Constitution) when it made this judgment and that this judgment on severability or revival was part and parcel of the federal decision made and was necessary to effectuate federal policy. Since this federal decision has been affirmed by the U. S. Supreme Court, it is binding on this Court.

Secondly, and in the alternative, this Court would hold that if this Court may properly re-examine the holding of the federal court that it should not do so at this time and should defer to the decision of the federal court on this judgment for all of the equitable reasons hereinbefore set out.

Thirdly, and again in the alternative, if this Court should consider the question on the merits, it would have to conclude that the Three Judge Federal Court was correct in its decision not to sever or revive any of the parts of Sections 34, 35 and 36 of Article III of the Iowa Constitution. Practically the federal court held that it was impossible to determine pertinent legislative intent at this time since when these acts were adopted no one could have anticipated the large shifts in population which have brought about apportionment problems.

A reading of the federal court's decision indicates that the doctrine of revival was strongly urged by the plaintiffs in that case, but rejected by a majority of the court because it was unsure of the application of revival upon the rather ambiguous provisions for the make-up of the Iowa House found in the original constitution. Judge McManus in a separate opinion in this case felt that revival would have been equally appropriate, but that the action taken by the majority was likewise an appropriate remedy to the situation confronting them. The cases are clear that legislative apportionment acts should be considered as a whole and that any small change in one house may well cause an imbalance that can make a whole plan unpalatable.

This Court would comment that the Three Judge Federal Court demonstrated a keen insight into the legislative problem presented to them by holding the three Sections invalid in their entirety. This permitted the Iowa

legislature to have the required amount of freedom in meeting federal constitutional standards without being hamstrung by numerical limitations and ratios placed on both the senate and house as would have been necessary if the revival theory had been adopted as urged by the plaintiffs in that case.

This Court then concurs with the action taken by the Three Judge Federal Court as affirmed by the U. S. Supreme Court with respect to the position taken on the questions of severability and/or revival in the striking down of Sections 34, 35 and 36 of Article III of the Iowa Constitution in order that federal constitutional standards might be met in Iowa apportionment.

There is then no requirement remaining in the Iowa constitution that the Iowa senate be composed of only 50 senators nor is there conversely any limitation on the number of members of the house as provided in earlier constitutional enactments.

Passing now to the question of subdistricting and the Iowa constitution.

Article III, Section 37, by its plain meaning and historical usage means exactly what it says: no county may be divided in forming a legislative district.

This being true, there can be no subdistricting of counties under the Iowa constitution. Further, this provision of the constitution, being a special provision and adopted by the people, cannot be found to be invalid by another general provision of the same constitution. Assuming arguendo that legislative subdistricting was permissive in Iowa, then is there a constitutional or statutory duty to subdistrict?

The Court finds none. To the contrary, at large multi-member elections in the legislature and for other governmental bodies is part of the Iowa heritage.

If this type of election causes a long ballot, difficult campaigning in urban areas, block voting and an injustice to areas where elections by single member districts are practiced, the Iowa courts have never found them constitutionally impermissible and this Court finds no persuasive reasons for doing so now under the constitution of Iowa. Classification by governmental bodies has long been judicially accepted in Iowa. The 1965 apportionment provides for apportionment by counties by population with no subdividing of counties. We see no unreasonable classification within those limitations.

PLAINTIFFS' DIVISION IV

This Division is a detailed attack upon the 1965 temporary or statutory apportionment plan based upon alleged discrimination contrary to Section 1 of the 14th Amendment to the Constitution of the United States. Briefly, plaintiffs make these allegations: (A) Polk County citizens vote for 11 legislators, single member districts for only one, (B) Polk County citizens vote for 5 senators, single member districts for only one, (C) Polk County residents do not have "identifiable constituencies", (D) The plan does not have a uniform operation and citizens in Polk County are deprived of equal protection of the laws, (E) At large elections result in block voting, (F) Multi-member districts operate to submerge minority groups, (G) Single-member district legislators have more personal contact with their constituents, (H) A citizen in Polk County can exert pressure on 11 different representatives, (I) A legislative candidate from Polk County for the house has 16 times more people to contact than

some other candidates for single-member districts, (J) A legislative candidate from Polk County for senate has 7 times more people to contact than some other candidates for single-member districts, (K) In Polk County the plan tends to minimize and cancel out the voting strength of political elements of the voting population, (L) Multi-member legislative districts tend to minimize and cancel out the voting strength of rural areas in urban counties and also to minimize and cancel out the voting strength of political elements of the voting population.

Defendants deny these allegations.

At issue in this Division is the constitutionality of at large elections in multi-member legislative districts under the federal standards. This is not a new issue. It was raised before the Three Judge Federal Court by a representative of a small Iowa county and decided by that Court in February of 1965 adversely to that representative. In that case the issue of a Polk County resident voting for 11 representatives and another Iowa citizen only voting for one was squarely presented to the court and decision made on this federal question by a federal court. Briefly the U. S. Supreme Court, Reynolds v. Sims, 377 U.S. 533, and Toombs v. Fortson, 241 Federal Supplement (1965), and Davis v. Cameron (S.D. Iowa February, 1965) have laid to rest any possible claim that at large multi-member legislative districts are *per se* unconstitutional. If multi-member districts are per se constitutional then arguments based on difference in number of candidates, differences in campaigning and knowing constituents and exerting pressure and the possibility of block voting are all inherent in a system of at large elections in multi-member legislative districts and are no basis for a finding of unconstitutionality. Plaintiffs it is believed "hang their hat" on the language in Toombs v. Fortson (supra) in

which the U. S. Supreme Court specifically indicated it was not passing on multi-district legislative schemes which "operate to minimize or cancel out the voting strength of racial or political elements of the voting population".

We suspect the U. S. Supreme Court in this language may have had in mind a situation comparable to the Pennsylvania reapportionment where the legislature set up some subdistricted counties and placed others of a similar size in at large multi-member districts depending, of course, on what was most advantageous to the political party then in public favor. (Drew v. Scranton). The U. S. Supreme Court vacated the federal district court judgment, (379 U.S. 40, November, 1964).

The United States Supreme Court in affirming Mann v. Davis (245 F.Supp. 241, 1965), made it very clear that it did not intend to have this restriction applied to apportionate plans set up in a rational, uniform manner even though some minority group might have elected a representative if there had been a different form of apportionment.

In this case two counties were joining together in Virginia and eight legislators elected from the two counties on an at large basis. There was a negro protest on the theory that if there was a different apportionment scheme, a negro might have been elected. This assumption was based on the number of negroes in a particular area. The United States Supreme Court did not agree. Factually, this situation is strikingly similar to the allegations of plaintiffs herein. Plaintiffs contend that if there had been subdistricting one or more Republican legislative candidates might have been elected in Polk County and possibly also a candidate from the rural portion of Polk County.

The Court finds these assertions speculative at best, but even if true would not be a basis for a finding of federal unconstitutionality.

Apportionment under the 1965 temporary plan is by counties and by population with no subdistricting in any county. There is no evidence of any intentional maneuvering of these simple and widely used guideposts to submerge minorities of any type. Members of both political parties were elected to the 1965 legislature in at large elections in multi-member districts as were both urban and rural residents.

This Court finds that the Polk County voters who voted for the defeated Republican legislative candidates in 1964 were not victims of a system that minimized or cancelled out their voting strength any more than the Linn County voters who voted for the defeated Democratic candidate for the state senate in 1964.

This Court finds that the plaintiffs have offered no evidence to show that the 1965 temporary apportionment is either per se unconstitutional or that its operation will tend to minimize or cancel out voting strength of political elements.

PLAINTIFFS' DIVISION VI

This division attacks the holding by the Three Judge Federal Court that Section 37, Article III of the Iowa Constitution is severable from Sections 34, 35 and 36 of the same Article which the Three Judge Federal Court found unconstitutional in their entirety and which decision was later affirmed by the U. S. Supreme Court.

This Court holds that this decision by the Three Judge Court was part and parcel of a judgment on a federal constitutional question which has been affirmed by the

U. S. Supreme Court and this Court is bound by this holding on a federal question.

In the alternative this Court holds that if it were proper for it to readjudicate this question, it would still defer to the holding of the federal court for all the equitable reasons urged heretofore in this decision.

Finally and again in the alternative, if this question were to be considered by this Court and on the merits it would hold as did the federal court that constitutional apportionment could be had without declaring this section unconstitutional and it was thus severable. If the 1965 temporary apportionment is federally constitutional as this Court believes, then the Three Judge Federal Court was obviously correct in its decision.

This Court would note in passing that plaintiffs appear to take contradictory positions on severability.

Their arguments on the severability of the 50 member senate constitutional provision are necessarily at war with their arguments on the severability of Section 37.

PLAINTIFFS' DIVISION VII

This Division appears to be a combination of plaintiffs' Divisions I, II, III, IV, and V and the points raised therein have already been covered by this opinion.

DEFENDANTS' COUNTER-CLAIM

Defendants, by way of counter-claim, ask for a declaratory judgment adjudging Senate File 568, Acts of the 61st General Assembly (1965 temporary or statutory apportionment plan) to be a constitutionally valid interim plan of apportionment.

This Court for all of the equitable reasons heretofore urged is inclined to find the 1965 apportionment plan argu-

ably close to constitutional standards so that it may be approved as an *interim* plan of apportionment.

The Court is not unmindful of the larger than 2 to 1 disparities in legislative districts existing in the house of representatives, but finds this factor balanced by the general overall equality of representation of the plan.

It should be remembered that "one-man, one-vote" is the goal and it is expected that future legislatures will strive toward that end.

In arriving at the conclusions hereinbefore set out this Court has made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

(1) That neither house of the Iowa legislature in recent times has been apportioned on a substantially population basis until a Three Judge Federal Court made an order requiring at least one house to be so apportioned as a result of a class action filed by two Polk County, Iowa, residents in August of 1962.

(2) That the apportionment of the 1965 Iowa legislature whose make-up was specified by a 1964 special session of the prior Iowa legislature called in compliance with the order of the Three Judge Court (supra) was held to be prospectively invalid by the same court in February of 1965.

(3) That the 1965 Iowa legislature upon its apportionment being declared prospectively invalid enacted a new statutory or interim apportionment plan which provides for greater population representation in the senate but leaves the house districts unchanged.

(4) That both statutory plans were adopted by the Iowa legislature in conformity with the Court's order which each time left intact the Iowa constitutional provision (Article III, Section 37) which the Three Judge Court described in its opinion each time as prohibiting the subdistricting of counties for legislative districts.

(5) That apportionment legislation is universally recognized as difficult legislation since it involves political issues including many times the very political lives of the enactors.

(6) That the Iowa State legislature in enacting both interim or statutory apportionment measures made good faith efforts to comply with the orders of the Three Judge Court.

(7) Counties or groups of counties have been used as the basic units for apportionment legislation in Iowa since 1846.

(8) Multi-member legislative districts with members to be elected at large have been present to some degree in every Iowa legislative apportionment since 1846.

(9) The Iowa constitution has been read by lawyers, judges, political scientists, and legislators according to its plain meaning since 1846 so as to prohibit subdistricting of counties in the formation of legislative districts.

(10) Political scientists, lawyers, and politicians disagree as to the relative merits of multi-member legislative districts, subdistricting, and combinations of the two methods of representation.

(11) The probability of partisan gerrymandering and mechanical problems arising from shifting population within a county are the principal general arguments advanced against subdistricting within a county.

(12) The difficulty of campaigning in a populous county, confusion caused by long ballots, and the alleged difficulty of personal contact between legislators and constituents both before and after election are principal arguments against at large elections in multi-member legislative districts.

(13) That at large voting for multiple members of school boards and city councils is and has been widely prevalent in the governmental structure of the political subdivisions of Iowa.

(14) That the Iowa legislature in complying with the court's order to give additional weight to the population factor in apportioning itself, each time met the problem by increasing the size of its membership.

(15) That the legislature's solution of adding members to meet federal constitutional requirements per se increased the number of legislators to be elected at large from multi-member districts.

(16) That one election has been held under the 1964 interim or statutory apportionment, but no further elections will be held under it since it has been declared to be prospectively invalid and replaced by the 1965 interim or statutory apportionment plan.

(17) That no election has yet been held under the 1965 interim or statutory apportionment plan. Evidence of alleged or prospective discrimination under it, if any, comes of necessity from its specific language or from speculation that the 1964 election patterns and problems will be duplicated in the 1966 election campaign since it does provide for at large elections in multi-member legislative districts as did the 1964 plan.

(18) That the 1964 election in Iowa resulted in a landslide victory for the national and state Democratic ticket which made the Democratic party the majority party in the Iowa legislature for the first time in about three decades.

(19) That the 1964 Democratic landslide was particularly complete in Polk County. The Democratic candidate for governor carried the county by a 4 to 1 margin and no Republican legislator was elected from Polk County.

(20) That candidates for the legislature in Polk County in 1964, as in previous elections, had more people to contact in their campaign and more people to serve in the legislature, if elected, since Polk County is the most populous county in the State of Iowa.

(21) That residents of Polk County had more legislative candidates to consider and vote for in 1964 since they were residents of the most populous county in the State of Iowa and under court-ordered federal constitutional population standards they were entitled to representation in the state legislature commensurate with the population of their county.

(22) That no specific or competent evidence was presented by plaintiffs as to any alleged difficulties and/or discrimination resulting from either the 1964 or 1965 interim or statutory apportionment in 96 of Iowa's 99 counties.

(23) That there was some evidence presented by plaintiffs and denied by defendant with reference to some individuals experiencing difficulties in campaigning, lobbying and meeting constituents under the 1964 apportionment plan in Polk County. There was, however, no

evidence presented of discrimination, either purposeful or otherwise, among candidates or voters in Polk County in the selection of legislative representatives.

(24) There was fragmentary and secondary evidence presented by plaintiffs as to some difficulty of campaigning by legislative candidates in Linn County in the 1964 election. There was, however, no evidence presented of discrimination, either purposeful or otherwise, among legislative candidates or voters in Linn County in the selection of legislative representatives.

(25) That plaintiff's evidence purporting to show that rural interests were being submerged in Polk County and Black Hawk County by at large voting in the 1964 election is offset by evidence concerning Linn County that rural legislative candidates were successful out of proportion to their numbers in the 1964 at large election in that county. In the face of this conflict on a sample of only two counties, the Court judicially notes that over the years in at large elections in multi-member legislative districts there has been no monopoly by either urban or rural legislators in winning elections. The Court therefore finds that there is no competent evidence in the record to substantiate plaintiffs' assertion that rural minorities are being submerged by the lack of subdistricting, there being additionally no competent evidence that urban or rural legislators within a county did not or do not represent all of their constituents without discrimination, in the Iowa statutory or interim apportionment plans.

(26) There is no competent evidence in the record to show that political minorities are being submerged by at large voting, plaintiffs' own testimony being that members of both major political parties were elected to the legislature from Linn County which negatives any possible

presumption arising from the election of all Democratic legislative candidates in Polk County and there being no such showing from any of the other 97 counties in Iowa.

(27) There is no competent evidence that some members of a political party might have won an election in 1964, or possibly win one in 1966, if the district boundaries had been or are different, such evidence being patently speculative in nature. In this respect there is no way of determining which candidates receive which voter's votes or stated another way whether registered Republicans vote for all Republicans in a general election or vice versa for registered Democrats.

(28) That there is no evidence that any discrimination, purposeful or otherwise, was practiced by the Iowa state legislature in setting up legislative districts in either statutory or interim apportionment plan since the districts were based on historical and constitutional political subdivisions.

(29) That there is no substantial evidence that the 1964 interim or statutory apportionment plan did not work reasonably well as a temporary apprtionment plan for all of the citizens of Iowa.

(30) That the 1965 interim or statutory apportionment plan is an improvement over the 1964 plan with reference to population standards in the senate and can reasonably be expected to work reasonably well as a temporary apportionment plan.

(31) That the proposed constitutional amendment with reference to apportionment passed for the first time in 1965 provides for permissive subdistricting and smaller numbers of legislators in both houses which will eventually diminish, if not eliminate, the objections raised by plaintiffs to the statutory apportionment.

(32) That the Three Judge Federal Court has since 1963 directed the Iowa legislature with restraint and only deliberate speed in proceeding toward constitutional apportionment in Iowa exercising equitable abstention frequently to permit orderly legislative action in performing legislative functions in this regard.

(33) That as a matter of equity, this Court should interfere with the orderly apportionment progress being made in Iowa only under the most compelling circumstances. That the record is devoid of any compelling circumstances which warrants the equitable intervention of this Court in this process which is proceeding in a generally satisfactory and orderly fashion.

(34) That under the interim or statutory apportionment plan, all the people in Iowa who qualify as registered voters can vote for members of the state legislature substantially in accordance with the population of the county or group of counties in which they reside and the weight of their vote is not to be diluted because of their place of residence.

(35) That the 1965 statutory or interim apportionment plan comes reasonably close to providing for substantial population equality among legislative districts and provides for a reasonable classification of legislative districts being based on political subdivisions, counties/or group of counties.

(36) That no useful purpose to the State of Iowa would be served by requiring a special session of the Iowa legislature at this time to require greater numerical equality among legislative districts.

(37) That it is in the best interests of the State of Iowa if the expenses of a special session of the Iowa legislature can be avoided.

(38) That legislative districts should be as nearly equal in population as possible and "one-man, one-vote" should be the goal for the Iowa legislature. However, the 1965 Iowa interim or statutory apportionment is arguably close to this standard.

(39) That it is therefore in the best interests of the State of Iowa if the 1965 interim or statutory apportionment is approved by the Court as an *interim plan of apportionment* and this court should so find.

CONCLUSIONS OF LAW

1. That plaintiffs have the burden of proof and have failed to sustain this burden in any of the Divisions of their petition.

2. That Divisions I and II of plaintiffs' petition attacking the constitutionality of the 1964 temporary apportionment raise moot questions since this plan has already been declared invalid by the Three Judge Federal Court.

3. That the 1965 temporary apportionment plan does not violate the Bill of Rights of the Constitution of the State of Iowa.

4. That there is a strong presumption of constitutionality of constitutions and statutes. The plaintiffs have not overcome this strong presumption by presenting evidence of the wisdom of alternative apportionment plans or by pointing out hardships in campaigning or by evidence that it does not create perfect equality.

5. That the Iowa legislature has the power to reasonably classify.

6. That equal protection of the law requires that all laws affect all persons equally when similarly situated.

7. That multi-member districts in and of themselves have never been held unconstitutional.

8. That classification of legislative districts by counties or groups of counties is not an unreasonable or arbitrary classification.

9. That Article III, Section 37, of the Iowa Constitution, by its plain language prohibits the subdistricting of counties in the formation of legislative districts.

10. That the Three Judge Federal Court in finding the apportionment of the Iowa legislature invidiously discriminatory and in violation of the 14th Amendment to the U. S. Constitution and striking down Sections 34, 35 and 36 of Article III of the Iowa Constitution in its entirety while finding Section 37 of the Iowa Constitution to be severable and valid was deciding a federal question and the question of severability of Section 37, Article III of the Iowa Constitution was part and parcel of this federal judgment of the application of the 14th Amendment of the U. S. Constitution to the Iowa apportionment system. That this decision on a federal constitutional question was appealed to the U. S. Supreme Court and was affirmed and is binding on this Court.

11. That in the alternative if this Court were to decide that the question of severability of Section 37, Article III is properly before this Court as an interpretation of the State Constitution on which state Courts are finally determinative then this Court should as a matter of equity defer to the two year old judgment of the Three Man Federal Court since the Iowa legislature has twice acted in good faith upon such finding of the Court; that such good faith reliance has resulted in improved apportionment for the State of Iowa which substantially meets federal constitutional standards; that an equity court should

strongly consider in deferring to the judgment of the federal court the improvement in apportionment in Iowa which has been achieved thus far in an orderly fashion with each branch of the government, judicial, legislative, and the executive acting properly and promptly within its sphere of authority and that partisan wrangling, judicial apportionment, and state-wide at large elections for state legislature such as has occurred in other states has not developed in Iowa.

12. That again in the alternative if this Court were to decide the question of severability of Section 37, Article III, on its merits, the decision would of necessity be that such section is severable since it has been possible to formulate an apportionment plan which substantially meets federal constitutional standards and still comply with Section 37, Article III.

13. That there is no revival of any part of the Iowa Constitution and specifically the 50 member limitation on the Iowa senate does not survive.

14. That the Three Judge Federal Court in finding the apportionment of the Iowa legislature invidiously discriminatory and in violation of the 14th Amendment to the U. S. Constitution and striking down Sections 34, 35 and 36 in their entirety and that no previous comparable sections or parts thereof were revived was deciding a federal question and these questions were part and parcel of this federal judgment of the application of the 14th Amendment of the U. S. Constitution to the Iowa apportionment system. That this decision on a federal constitutional question was appealed to the U. S. Supreme Court and affirmed and is binding on this Court.

15. That in the alternative if this Court were to decide that the question of revival is properly before this

Court as an interpretation of the state constitution on which state courts are finally determinative then this Court should as a matter of equity defer to the two year old judgment of the Three Man Federal Court since the Iowa legislature has twice acted in good faith upon such finding of the Court; that such good faith reliance has resulted in improved apportionment for the State of Iowa which substantially meets federal constitutional standards; that an equity court should strongly and properly consider in deferring to the judgment of the Three Man Federal Court that improved apportionment in Iowa has thus far been achieved in an orderly fashion with each branch of the government, judicial, legislative, and executive acting properly and promptly within its sphere of authority and that partisan wrangling, judicial apportionment, and state-wide at large elections for the legislature have not developed in Iowa.

16. That again in the alternative if this Court were to decide the question of revival on its merits that its decision, of necessity, would be that the remedy of revival is not appropriate under the instant circumstances for these reasons: (1) There is no legislative intention discernible to imply revival was intended under these circumstances brought on by shifting populations not apparent or predictable when the constitutional provisions were originally enacted, (2) That the application of revival would have complicated statutory apportionment if applied in its full scope to also apply to the revival of the house of representatives provided for in the original Iowa Constitution and (3) Apportionment legislation must be considered as a whole since a small change in one house may well throw the entire apportionment scheme out of balance.

17. That Article III, Section 37, of the Iowa Constitution cannot be declared unconstitutional under the Iowa constitution.

18. That it is a general rule in construing a constitution that the special provision is given effect over the general provision.

19. That the concept of "one-man one-vote" as enunciated by the U. S. Supreme Court in June of 1964 is not an ancient principle and was not contemplated by the Iowa Bill of Rights at least as late as Selzer vs. Synhorst, a 1962 decision of the Iowa Supreme Court which approved as constitutional an apportionment plan for the Iowa legislature in which neither house was remotely close to the "one-man one-vote" principle.

20. That a state court does not have the power to declare a section of the state constitution unconstitutional.

21. That in following Article III, Section 37, of the Iowa constitution, and thereby not providing for subdistricting counties, the 61st General Assembly of the Iowa legislature has provided an interim plan which is valid under the Iowa and federal constitutions.

22. That so long as a state's system of legislative apportionment meets the test of substantial equality of population among the various legislative districts, to have or not to have multi-member districts is a matter of civic taste to be determined in each state by the political majority in control.

23. Article III, Sections 34, 35 and 36 of the Iowa Constitution as they existed in 1964, and as they originally existed in 1857, are inseparable and must be considered together and they must be valid or invalid together.

24. That Article III, Section 37, of the Iowa Constitution, is a formulation of one of the basic ideas of Iowa government that county lines shall be the divisions of the representative units in the state legislature; that this

is not part of the framework of an apportionment plan but rather a separate principle which has not changed for 119 years while Iowa apportionment plans have.

25. That the 1965 temporary apportionment plan arguably meets the constitutional requirements of equal voting rights primarily based on a population principle.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition of the plaintiff and each Division thereof is dismissed at plaintiffs' costs,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as a matter of declaratory judgment requested in defendants' counter-claim the 1965 temporary apportionment plan (Senate File 568, Acts of the 61st General Assembly of the State of Iowa) is approved and declared constitutional as an interim plan of apportionment.

/s/ Harry Perkins
Judge

Dated and signed in Des Moines, Iowa, of this 5th day of November, 1965.

APPENDIX B

IN THE SUPREME COURT OF IOWA

ELIZABETH KRUIDENIER, ROBERT R. RIGLER, LaMAR FOSTER, Sr., and THOMAS S. HEFLEY,
Appellants,

v.

W. E. McCULLOCH, Auditor of Polk County, Iowa, and HAROLD E. HUGHES, Governor of State of Iowa, GARY L. CAMERON, Secretary of State, LORNE R. WORTHINGTON, State Auditor, PAUL FRANZENBURG, State Treasurer, KENNETH E. OWEN, Secretary of Agriculture, in their elective capacities and also collectively and individually as the Executive Council of the State of Iowa, and LAWRENCE F. SCALISE, Attorney General, and ROBERT D. FULTON, Lieutenant Governor,
Appellees.

(Filed)
April 15,1966)
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APPEAL FROM POLK DISTRICT COURT.
HARRY PERKINS, JUDGE.

Class action in equity attacking the constitutionality of the temporary reapportionment plans adopted by the Sixtieth and Sixty-first General Assemblies of Iowa, resulted in dismissal of plaintiffs' petition and decree declaring 1965 temporary or statutory apportionment plan to be a constitutionality valid interim plan of apportionment. Plaintiffs appeal.—Affirmed in part and reversed in part.

David W. Belin of Herrick, Langdon, Sandblom & Belin, of Des Moines, for appellants.

Lawrence F. Scalise, Attorney General, and Timothy McCarthy, Solicitor General, for appellees.

PER CURIAM

The following opinion of Justice Mason, except for Divisions IX and XII and certain statements in Division XIII related thereto, is adopted as the opinion of the court with all justices concurring therein, except that Justice Larson dissents from Division X of the opinion.

The opinion of Justice Stuart is adopted as the opinion of the court in lieu of said Divisions IX and XII and certain statements in said Division XIII related thereto.

Chief Justice Garfield and Justices Larson, Snell and Moore concur in the opinion of Justice Stuart.

Divisions IX and XII, and the statements related thereto in Division XIII of the opinion of Justice Mason, are a dissent to the opinion of Justice Stuart, with Justices Thornton, Rawlings and Becker joining therein.

MASON, J.—This suit was instituted by appellants, citizens and qualified voters of Cedar, Chickasaw and Polk County, one a state senator, another a representative, as a class action in their own behalf and in behalf of other Iowa voters similarly situated. Defendants are state and county officials charged with performing various duties in connection with conducting elections in Iowa.

Plaintiffs' petition, as amended, in seven divisions, attacks the constitutionality of the temporary reapportionment plans adopted by the Sixtieth, special session (Senate File 1, chapter 1) and Sixty-first (Senate File 568, chapter 88) General Assemblies as in violation of sections 1, 2 and 6 of Article I of the Iowa Constitution and the equal protection clause of section 1 of Amendment 14 to the United States Constitution. Constitutional questions

are raised as to sections 34, 35, 36 and 37 of Article III of the Iowa Constitution and as to multi-member districts. The relief sought is to obtain an adjudication the plans referred to are unconstitutional.

Defendants, by way of counterclaim, ask for declaratory judgment adjudging Senate File 568, Acts of the Sixty-first General Assembly (1965 temporary or statutory apportionment plan), to be a constitutionally valid interim plan of apportionment.

Trial to the court resulted in decree dismissing plaintiffs' petition and declaratory judgment declaring constitutional Senate File 568, Acts of the Sixty-first General Assembly, as an interim plan of apportionment. Plaintiffs appeal.

This is the second appeal in this case. See Kruidenier v. McCulloch, 257 Iowa , 136 N.W. 2d 546, which reversed the sustaining of defendants' special appearance and remanded the cause for trial.

I. The 1965 temporary reapportionment plan fixed the number of senators at 61 and apportions them in districts whereby each district has one senator except Polk County, which constitutes the 20th district, with five senators to be elected at large, except Black Hawk County (32nd district) and Linn County (24th district) each with three senators to be elected at large, and the following counties, each constituting separate districts, with two senators to be elected at large: Dubuque County (30th district); Pottawattamie County (13th district); Scott County (15th district) and Woodbury County (37th district).

The plan provides that the House of Representatives "shall be apportioned on a population basis." Forty-six counties would each comprise one district and each elect

one representative, 17 additional districts are comprised of two counties each with each district entitled to one representative, and the counties of Louisa and Muscatine are combined into a single district with two representatives to be elected at large. In addition, said 1965 temporary reapportionment plan provides the counties of Cerro Gordo, Webster, Story, Jasper, Johnson, Clinton, Wapello, Marshall, Des Moines and Lee shall comprise one district each and each shall elect two representatives; Dubuque County shall comprise one district and shall elect three representatives; Pottawattamie County shall comprise one district and shall elect four representatives; the counties of Scott, Woodbury and Black Hawk shall comprise one district each and each shall elect five representatives; Linn County shall comprise one district and shall elect six representatives; Polk County shall comprise one district and elect eleven representatives.

II. The 1904 amendments (Article III, sections 34, 35 and 36) provided for express repeal of the same sections in the Constitution of 1857. Article III, section 34, as then amended, provides:

"The Senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census."

Article III, section 35, as amended, provides:

"The House of Representatives shall consist of not more than one hundred and eight members. The ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last

preceding state or national census, by the whole number of counties then existing or organized, * * *"

Article III, section 36, as amended, provides:

"The General Assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as herein before required:"

The 1928 amendment contained no such repealer and dealt with only one section of the apportionment provisions (section 34) by adding thereto the words "but no county shall be entitled to more than one (1) senator".

Senate File 1 (the 1964 temporary reapportionment plan) was repealed by Senate File 568 (the 1965 temporary reapportionment plan) which was enacted as chapter 88, Laws of the Sixty-first General Assembly, June 3, 1965, after this action was commenced.

III. Divisions I and II of plaintiffs' petition allege the 1964 temporary reapportionment plan of the Iowa legislature should be declared invalid under sections 1, 2 and 6 of Article I of the state constitution and as in violation of the equal protection clause of section 1 of Amendment 14 of the Constitution of the United States because the plan provides that senators and representatives be elected at large from certain districts including the district of Polk County.

Divisions III and IV correspond to Divisions I and II except they attack the 1965 temporary apportionment plan as invalid under the state and federal constitutions because the plan does not have a uniform operation and grants to certain citizens or classes of citizens within the

state of Iowa, privileges or immunities which, upon the same terms, shall not equally belong to all citizens in that said plan provides for senators to be elected at large from certain districts including the district of Polk County. The issue plaintiff urges is the constitutionality of at-large elections in multi-member districts.

Division V asserts the method of apportionment of the Senate of the state of Iowa established by the original constitution of the state as amended in 1904 and prior to the Amendment of 1928 is constitutional; the Amendment of 1928 that added to section 34, Article III, the phrase, "no county shall be entitled to more than one (1) senator", is unconstitutional; and therefore the apportionment of the Iowa Senate is governed by the provisions of the 1904 amendment, Article III, section 34, which apportions the Senate on the basis of population and further declares that "the Senate shall be composed of fifty members"; the 1964 and the 1965 temporary reapportionment plans, each of which provides for more than 50 senators, are therefore unconstitutional.

Division VI is in the alternative and prays that the court find sections 34, 35, 36 and 37 of Article III of the Constitution of Iowa are each and all inseparable, that the provisions for apportionment found in said Article are invidiously discriminatory and therefore unconstitutional and void and the 1964 and 1965 temporary reapportionment plans do not have a uniform operation because they do not provide for subdistricting and are therefore unconstitutional. In this division plaintiffs attack the holding of the three-judge federal court that section 37, Article III, of the Iowa Constitution, is severable from sections 34, 35 and 36 of Article III.

Division VII is a combination of the prior provisions asking the court find the existing reapportionment plans

unconstitutional because they do not provide for subdistricting and because they provide for a Senate of more than 50 members.

Briefly, plaintiffs make these allegations: (A) Polk County citizens vote for 11 legislators, single-member districts for only one, (B) Polk County citizens vote for five senators, single-member districts for only one, (C) Polk County residents do not have "identifiable constituencies", (D) The plan does not have a uniform operation and so citizens in Polk County are deprived of equal protection of the laws, (E) At-large elections result in block voting, (F) Multi-member districts operate to submerge minority groups, (G) Single-member district legislators have more personal contact with their constituents, (H) A citizen in Polk County can exert pressure on 11 different representatives, (I) A legislative candidate from Polk County for the House has 16 times more people to contact than some other candidates for single-member districts, (J) A legislative candidate from Polk County for the Senate has seven times more people to contact than some other candidates in single-member districts, (K) In Polk County the plan tends to minimize and cancel out the voting strength of political elements of the voting population, (L) Multi-member legislative districts tend to minimize and cancel out the voting strength of rural areas in urban counties and minority political elements of the voting population.

IV. Other cases attacking the various apportionment plans of the legislature commenced in the United States District Court for the Southern District of Iowa are: Davis v. Synhorst, 217 F. Supp. 492 (1963), 225 F. Supp. 689 (1964), (affirmed, Hill v. Davis, 378 U.S. 565, 84 S. Ct. 1918, 12 L. Ed. 2d 1037), 231 F. Supp. 540 (1964), Davis v. Cameron, 238 F. Supp. 462 (1965).

V. Defendants' answer denies the claim of discrimination, urges plaintiffs' action is not timely brought, asserts the questions in Divisions I and II are moot by reason of the decision of the three-judge federal court in Davis v. Cameron, supra, contends section 37 of Article III of the state constitution prohibits the dividing of counties and said Article cannot be declared to be unconstitutional under the state constitution. Defendants deny the 1965 temporary plan is in violation of the equal protection clause of section 1, Amendment 14 of the federal constitution, contend the judgment in Davis v. Synhorst, supra, affirmed by Hill v. Davis, supra, declares sections 34, 35 and 36 of Article III as invidiously discriminatory and declared to be prospectively null and void and inoperative for all future elections to the general assembly of the state of Iowa, except elections to fill the vacancies in the present general assembly. They assert the decision of the three-judge federal court, which plaintiffs contend is erroneous, has been affirmed by the United States Supreme Court in Hill v. Davis, supra. In answer to Division VII defendants incorporate much of their prior answer in order to place at issue the matters alleged therein.

VI. Plaintiffs assign as propositions relied on for reversal: (1) The trial court erred in failing to hold single-member districts in the Iowa legislature are required by Article I, section 6 of the state constitution. (2) The 1964 and 1965 temporary reapportionment plans which respectively provide for 59 and 61 senators are unconstitutional as in violation of section 34, Article III of the state constitution; in the alternative, sections 34, 35, 36 and 37 of Article III are inseparable and where three of these provisions have been held federally unconstitutional, the fourth must also fall and the trial court erred

in holding to the contrary on both of these alternatives. (3) The trial court erred in failing to hold the multi-member constituency apportionment scheme of the 1964 and 1965 temporary reapportionment plans violates the equal protection clause of section 1, Amendment 14 of the federal constitution.

VII. Plaintiffs assert in a brief point under their first proposition that uniform operation of laws and equality of privileges and immunities require that every Iowa voter is equal to every other Iowa voter when he casts his ballot in an election for state senator or state representative, there is no state constitutional prohibition against subdistricting, Article I, section 6, requires single-member districts in the Iowa legislature and they assert the temporary reapportionment plan which provides for multi-member districts and single-member districts in each house of the legislature violates this particular section of the Bill of Rights of the State constitution which provides:

"All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." That single-member districts in the Iowa legislature are required by this section and that the trial court erred in holding to the contrary.

VIII. We will first consider plaintiffs' contention that there is no constitutional prohibition against subdistricting, which presents the question: May a county be divided to form two or more senatorial or representative districts, each of them to be totally within such county? Answering the question involves an interpretation of the state constitution, and in this field we are the final arbiter. Kruidenier v. McCulloch, 257 Iowa , 136 N.W. 2d 546,

548, and citations; United Gas Pipe Line Company v. Ideal Cement Company, 369 U.S. 134, 135, 82 S. Ct. 676, 677, 7 L. Ed. 2d 623. When there is an unavoidable conflict between the federal and a state constitution, the supremacy clause of course controls. Reynolds v. Sims, supra, 377 U.S., at 584, 84 S. Ct., at 1393.

Article III, section 37, as it now exists, which was the same in the 1846 Constitution as Article III, section 32, provides:

"When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district."

Defendants assert and the trial court held this provision prohibits subdividing a county in forming a senatorial or representative district wholly within that county, i.e., what is commonly called subdistricting. Plaintiffs contend, however, section 37 prohibits only dividing a county and attaching the divided part to all or part of another county or other counties in forming a legislative district. Otherwise stated, the contention is that section 37, supra, does not proscribe establishing more than one district within a single county so long as it is not combined with territory outside the county.

We think the construction of section 37 for which plaintiffs contend is the more reasonable and hence adopt it. There is no division of a county within the meaning of this section as long as a senatorial or representative district is entirely within a specific county. Only if a senatorial or representative district were to take in a portion of two or more counties would there be a "divided" county in the formation of a district which is prohibited

by this section. It is our duty to harmonize this section, if fairly possible, with other provisions of our state constitution, particularly, as applied to the present controversy, section 6, Article I thereof, providing for uniformity and equality in legislative enactments. 16 Am. Jur. 2d, Constitutional Law, sections 66, 67. The construction we give section 37, Article III, supra, gives full effect to both these provisions.

Further, if section 37, Article III, were construed to prohibit subdistricting of a single county where such subdistricting is necessary to provide equal protection of the laws, it would not only conflict with section 6, Article III, of our state constitution but it would violate the equal protection clause of section 1 of Amendment 14 of the federal constitution. Since the federal constitution is, of course, supreme, such a construction of section 37 would render it of no effect. McCulloch v. Maryland, 4 Wheat (U.S.) 316, 426, 4 L. Ed. 579, 606; 16 Am. Jur. 2d, Constitutional Law, section 54, page 226.

It is a fundamental rule of statutory construction that where a statute is fairly open to two constructions, one of which will render it constitutional and the other unconstitutional or of doubtful constitutionality, the construction by which it may be upheld will be adopted. Mechanicsville v. State Appeal Board, 253 Iowa 517, 527, 111 N.W. 2d 317, 323, and citations; Jacobs v. Miller, 253 Iowa 213, 218, 111 N.W. 2d 673, 676; Kerr v. Chilton, 249 Iowa 1159, 1166, 91 N.W. 2d 579, 584, and citations; 16 C.J.S., Constitutional Law, section 98b, pages 375, 376.

A like rule fully applies in construing a provision of a state constitution. If fairly possible, it will be construed so it does not violate a provision of the federal constitution. 16 Am. Jur. 2d, Constitutional Law, section 67, page

246, states: "* * * where a provision of a state constitution is capable of two constructions, one of which would be in conflict with the Federal Constitution, the other must be adopted." Under the construction we give section 37, Article III, of our own constitution there is no violation of the equal protection clause of Amendment 14.

IX. We next combine for consideration plaintiffs' contention single-member districts are required by section 6, Article I, of the state constitution and their third proposition the multi-member constituency apportionment scheme of the temporary reapportionment plan violates section 1, Amendment 14 of the federal constitution.

After Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, was decided on March 26, 1962, the Supreme Court on June 15, 1964, decided Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506, furnishing guidelines for apportionment in state legislatures.

The same day the Supreme Court announced its decisions in the following cases: WMCA, Inc. v. Lomenzo, 377 U.S. 633, 84 S. Ct. 1418, 12 L. Ed. 2d 568; Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656, 84 S. Ct. 1429, 12 L. Ed. 2d 595; Davis v. Mann, 377 U.S. 678, 84 S. Ct. 1441, 12 L. Ed. 2d 609; Roman v. Sincock, 377 U.S. 695, 84 S. Ct. 1449, 12 L. Ed. 2d 620; Lucas v. Colorado General Assembly, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632. With Reynolds the cases deal with the states of Alabama, New York, Maryland, Virginia, Delaware and Colorado.

As a basic constitutional standard the equal protection clause requires seats in both houses of a bicameral state legislature be apportioned on a population basis. An individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substan-

tial fashion diluted when compared with votes of citizens living in other parts of the state. Reynolds v. Sims, 377 U.S. 533, 568, 84 S. Ct. 1362, 1385.

By holding as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the equal protection clause requires that a state make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement. Reynolds v. Sims, 377 U.S. 533, 577, 84 S. Ct. 1362, 1389-1390.

We reject the contention that formation of single-member districts is necessarily required by either section 6, Article I, of the state constitution, or section 1, Amendment 14, of the federal constitution. See in support Reynolds v. Sims, supra; Lucas v. Colorado General Assembly, supra, 377 U.S., at 731, n. 21, 84 S. Ct., at 1471, n. 21, where the court said, "We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective," and the following statement from Fortson v. Dorsey, 379 U.S. 433, 85 S. Ct. 498, 500:

"Only last term, in our opinion in Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506, decided after the decision below, we rejected the notion that equal protection necessarily requires the formation of single-member districts. In discussing the impact on bicameralism of the equal-protection standards, we said, 'One body could

be composed of single-member districts while the other could have *at least some* multimember districts' 377 U.S., at 577, 84 S. Ct., at 1389. Again, in holding that a state might legitimately desire to maintain the integrity of various political subdivisions, such as counties, we said: 'Single member districts may be the rule in one state, while another state might desire to achieve some flexibility by creating multimember or floterial districts. *Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state.*' 377 U.S., at 579, 84 S. Ct., at 1390."

The creation of multi-member districts is not in itself a violation of either section 6, Article I, of the state constitution or section 1, Amendment 14, of the federal constitution. Fortson v. Dorsey, supra; Reynolds v. Sims, supra. However, we do recognize in a proper case there might be discrimination. Both Lucas and Fortson, supra, give recognition to some of the objections to multi-member districts. It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. A legislative scheme which creates single-member districts and multi-member districts in an arbitrary manner would be objectionable. In the absence of any reasonable explanation or justification (historical or otherwise), such districting might be the result of gerrymandering for partisan advantage and, in that event, would be arbitrary and capricious. Butcher v. Bloom, 203 A. 2d 556, 573.

In Lucas, supra, under the plan being considered by the court, each Denver voter was required to vote for 18

senators and 17 representatives. Ballots were long and cumbersome, and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies within the populous counties resulted, and the residents of those areas had no single member of the Senate or House elected specifically to represent them. Rather, each legislator elected from a multi-member county represented the county as a whole.

The foregoing statements have been referred to in various opinions as "the objections" to multi-member districts.

Appellants under their third proposition, after calling attention to the fact that the metropolitan Des Moines area extends across the Polk County line into Warren County, pose the following questions: Is it equality that one person who works in the city of Des Moines can vote for 11 representatives and his neighbor because of the location of the house in which he lives can vote for only one? Is it equality that the person in Polk County can vote for five senators every four years and his neighbor in Jasper County can vote for only one? Is it equality to the citizens in Polk County that none of them has any single representative to whom he can look to represent his views in contrast to the neighbor in Warren County? On the other hand, is it equality that the neighbor in Warren County can only directly influence the vote of one representative or one senator whereas the Polk County citizen can directly influence the vote of 11 representatives and five senators?

The same contention was presented to the three-judge federal court in Davis v. Cameron, supra, 238 F. Supp., at 466, except Ringgold County was substituted for Warren County.

"Defendant Drake raises the additional issue that Senate File 1 is invalid because it creates two classes of representative and senatorial districts, that is, a single-member and multi-member districts. He contends 'that under said plan, although the voters of a majority of the counties are permitted to vote for but one representative and to elect only one representative, a voter residing in Polk County is permitted to vote for and elect 11 representatives. Thus the vote for representation in the House of Representatives of a voter residing in Polk County is thus given 11 times the weight of a voter in Ringgold County. That a voter in Polk County is a constituent of and is represented by 11 representatives in the Iowa General Assembly, whereas a voter in Ringgold County is a constituent of and is represented by only one representative in the House of Representatives.' He makes similar claims with respect to variances between the single and multi-member senatorial districts. In a recent decision the Supreme Court held that the creation of multi-member districts is not in itself a violation of the equal protection clause. Fortson v. Dorsey, (1965) 85 S. Ct. 498. The Court recognized in a proper case discrimination might be claimed and in this respect stated as follows:

"'* * * It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster.'"

We fail to see the difference between the argument advanced by appellants in support of this contention and that advanced by Drake which we have quoted. The court in Cameron, supra, said: "Defendant Drake makes no

such claim herein. We therefore hold the creation of multi-member districts is not in itself invalid."

In written argument appellants quote extensively from Drew v. Scranton, 229 F. Supp. 310 (N.D. Penn. 1964), to support their contention. The court was considering Pennsylvania's representative reapportionment act which had set up a curious pattern of representative districts in the larger counties. In all counties entitled to two representatives, except Lebanon, single-member districts were created. Likewise, in cases of Lackawanna and York, entitled to four representatives, Berks, entitled to five, and Luzerne and Westmoreland, entitled to six, single-member districts were uniformly provided. But in the larger counties no such pattern was followed. Fourteen of the larger counties were entirely divided into single-member districts, while at the same time 15 other larger counties, many of them adjoining the single-member district counties, were divided into a crazy quilt of one, two, three and four-member districts. In the absence of any legislative history or other explanation justifying it, the court concluded "this districting is either the result of gerrymandering for partisan advantage, as was suggested at the hearing, or it was wholly arbitrary and capricious."

The 1965 temporary plan is not a legislative scheme creating single-member districts and multi-member districts in an arbitrary manner or the result of gerrymandering for partisan advantage, nor is it arbitrary and capricious. It creates no such situation as was before the court in Drew v. Scranton, supra. Certainly the provision for multi-member districts contained in the temporary plan has a legislative history justifying it.

The Iowa legislators, or at least a significant number of them, apparently took the position section 37 of the Iowa

constitution, which has remained in its present form since the Constitution of 1846, forbid subdistricting in Iowa. As pointed out in appellees' brief, the first apportionment in this state provided for multi-member districts (Lee County had five representatives and two senators, Van Buren and Des Moines counties each had four representatives and two senators). Section 37 was in force at the time as section 32. The legislature did not indulge in subdistricting then or at any subsequent time. Yet from 1846 to date some Iowa counties were entitled to multiple representatives. At no time has there been subdistricting. Historically, and on the basis of legal opinion available to them, the legislators who believed they were precluded from subdistricting were correct. It was their sworn duty to follow the constitution as written and as it remained after the federal court's condemnation of sections 34, 35 and 36.

Prior to this opinion the only authoritative legal interpretation of section 37 came from the three-judge federal court in Davis v. Synhorst, 217 F. Supp. 492; and 225 F.Supp. 689 (1964). Both cases clearly recognized that under the present Iowa constitution subdistricting would be prohibited; neither opinion indicated in any way such prohibition was or is repugnant to the United States Constitution. Today we have held section 37 does not prohibit subdistricting under the conditions set forth in Division VIII, supra.

This history dispels the reasons given by the three-judge federal court in Drew, supra, for its conclusions.

The 1965 temporary plan not only lacks the objections to which attention is called in Lucas and Fortson, both supra, as creating a proper case for claiming discrimination, but was an "honest and good faith effort to construct

districts in both houses of the legislature as nearly of equal population as practicable." Reynolds v. Sims, supra.

While Drew v. Scranton, supra, was pending on appeal, the Pennsylvania supreme court decided Butcher v. Bloom, 203 A. 2d 556. The judgment in Drew v. Scranton was then vacated by the United States Supreme Court.

Appellants further contend a system of at-large election of senators and representatives results in block voting and discrimination against persons within Polk County who might have a senator or representative elected to represent their views.

They assert subdistricting in Polk County would have guaranteed representation of the minority party in that county. As a basis for such claim they show 23 contiguous west side precincts, which include every precinct in Des Moines which has any portion thereof lying west of 30th Street to the west limits and from the north city limits to the south city limits, had 28 percent of the Polk County vote cast in the 1964 election (registered Republicans in this area outnumber registered Democrats by a margin of nearly two-to-one). In 1964 two Republican candidates for state representative received more votes in these 23 contiguous west side precincts than any Democratic candidates, but no Republicans were elected in Polk. Said differently, if there had been subdistricting in Polk County, it is possible two Republicans would have been elected as state representatives.

This same argument was urged in Stout v. Bottorff, 246 F. Supp. 825 (S.D. Ind. 1965). The court, reaching a conclusion contrary to appellants' contention, said:

"We also see no merit in plaintiff Grills' attack on the 1965 Act for failure of the legislature to divide Marion

County into districts rather than making it a single, multi-member district electing members of the general assembly at large. In support of this claim that the Act thus deprives certain voters in Marion County of equal representation Grills has submitted voting records showing that in some past elections certain townships or other areas of the county would have elected a candidate of the minority party in that particular election if the county had been subdistricted. We have been shown no evidence in these records of any discrimination, purposeful or otherwise, against any group of voters in the at-large election system in Marion County, and in the absence of such a showing, Grills is not entitled to any relief on the basis of this claim." Citing cases.

No citizen of Iowa as a result of the legislative scheme provided by the 1965 temporary plan has been deprived of his right to vote for the duly nominated candidate of the party of his choice and in the area in which he resides.

The burden of proving a legislative enactment to be violative of the constitution rests upon those so asserting to the degree of negativing every reasonable basis of support therefor. Faber v. Loveless, 249 Iowa 593, 597, 88 N.W. 2d 112, 114, and citations; Davis v. Synhorst, 217 F. Supp., at 497.

Appellants' contentions considered in combination in this division cannot be sustained.

X. Under the second proposition relied on for reversal appellants contend there is a valid constitutional requirement today that the Iowa Senate be composed of 50 members. In support they urge section 34, Amendment of 1904, provided for a Senate of 50 members apportioned among the several counties or districts according to population, and it was the limitation that no county shall be en-

titled to more than one (1) senator, placed on this section by the Amendment of 1928, that led the three-judge federal court in Davis v. Synhorst, 217 F. Supp. 402, to declare this section unconstitutional as being invidiously discriminatory.

In the alternative, they urge sections 34, 35, 36 and 37 of Article III of the state constitution be declared inseparable and where portions of three of the provisions have been held federally unconstitutional, the remaining portion of these three provisions plus the fourth provision must also fall as an inseparable part of the apportionment scheme.

We do not agree with appellants' first contention under this proposition, nor can we accept their argument in the alternative. In Davis v. Synhorst, 225 F. Supp. 689, the federal court was correct when it said at page 692:

"* * * It is the view of the court that Article III, sections 34, 35, and 36 of the Iowa Constitution which have as their object and purpose the establishment of a complete apportionment plan for the selection of members of both houses of the General Assembly are inseparable. Under the circumstances of this case it is our opinion that said sections in combination are inseparable." Citing cases. We believe the statement is sound and adopt it here.

The Constitution of 1846 contained Article III, section 37, as it now exists as Article III, section 32. Article XII, section 7, designated the number of representatives for each county. Article III, section 31, set out the number of senators and representatives, how apportioned among the county and how often apportioned.

The 1857 Constitution retained section 37 as unchanged, whereas, sections 34, 35 and 36 embodied a new plan of apportionment. Section 34 referred to senators and

how they were to be apportioned and how often. Section 35 set out the number of senators and representatives; it set out a restriction on the number of counties in a representative district; it set out circumstances where a county or district would be entitled to one representative and when any county or district would be entitled to an extra representative; and it provided there would be no floating districts. Section 36 provided that in every legislative session a ratio would be fixed and legislative districts would be formed.

In 1904 a new reapportionment plan became law. The Amendments of 1904 repealed prior sections 34, 35 and 36 and adopted sections 34, 35 and 36 as set out in Division II, supra. Sections 34, 35 and 36 are a scheme of legislative reapportionment which is inseparable for, if section 35 is stricken, that which remains is incomplete and does not accomplish an effective scheme for the constituting of the Iowa legislature.

In 1904 the legislature and the people had before them a complete reapportionment plan with sections 34, 35 and 36 thereof interrelated and so connected with the whole act that when section 35, which has been declared unconstitutional by the federal court, is stricken from such scheme, it is impossible to give full effect to what appears to have been the intent of the legislature.

Sections 34, 35 and 36 being inseparable, it follows there is no valid constitutional requirement today that the Iowa Senate be composed of 50 members.

Where the act is single as to its objective, or seeks to obtain a single object or purpose, then if part of the act is unconstitutional, such part cannot be separated from the constitutional part if they are connected and dependent upon each other so that if you reject the unconstitutional

part you destroy the legislative intent, then the whole act must fall. Smith v. Thompson, 219 Iowa 888, 898, 258 N.W. 190, 196.

Where part of an amendment to a state constitution is invalid because it violates the Federal Constitution, if the several parts of the amendment are separable, the valid portions may be saved, unless it is obvious that the intent of the adopters of the amendment was to accept one general scheme in an entirety, in which event, if part of the amendment falls, the whole must fall with it. 16 Am. Jur. 2d, Constitutional Law, section 42.

We agree with the view of the federal court as expressed in Davis v. Synhorst, 225 F. Supp. 689, 692, that section 37 is not an inseparable feature of the constitutional apportionment provisions. It does not conflict with the requirements of equal protection of the laws required by the state and federal constitutions under the interpretation we have given to such section in Division VIII, supra, and thus remains a part of our constitution.

XI. The trial court, as a matter of declaratory judgment requested in defendants' counterclaim, approved the 1965 temporary apportionment plan as a constitutional interim plan of apportionment. While Senate File 568, chapter 88, Laws Sixty-first General Assembly of Iowa (1965 temporary apportionment plan) contains objections to both state and federal standards required for equal protection as disclosed by the record in Polk County, the only multi-member district before us in this case, it is sufficient to serve as an interim plan of apportionment. Reference will be made to these objections later in this opinion. We now hold that members of the Sixty-second General Assembly of Iowa be elected at the 1966 election in accordance with its terms and provisions.

XII. We do not believe the creation of multi-member districts, of itself, would violate either the state or federal constitutions simply because the voters in a particular district (where justified by population) would vote for two or more representatives while those in another district would vote for a lesser number. However, we do believe where the objections to multi-member districts as set out in Lucas, Fortson and Drew, supra, are found to exist to the point where there is invidious discrimination leading to the conclusion that equal protection rights are violated, a plan of apportionment able to withstand constitutional attack would be more readily accomplished by subdistricting in those instances.

XIII. The record indicates many of the same objections contained in Lucas, Fortson and Drew, supra, existed in the 1964 Polk County election and will probably continue to exist there unless we direct subdistricting in that county.

In the 1964 primary election the voter wishing to vote the Democratic ticket was confronted with a ballot containing the names of 33 candidates seeking the 11 nominations for state representative from that county; for state senator, there were two candidates for the four-year term and two for the one-year term. The voter desiring to vote in the Republican primary was confronted with a ballot containing the names of 14 candidates seeking the 11 nominations of that party.

At the 1964 general elections a voter was confronted with a ballot containing the names of 22 candidates seeking the 11 vacancies for state representative; one candidate on each ticket for state senator for the two-year term and one on each ticket for the four-year term; in addition there were the Conservative party's candidates.

The ballots were long and cumbersome and an intelligent choice among candidates for seats in the legislature was made quite difficult. No identifiable constituencies within the county resulted and the residents of the various areas had no single member of the House or Senate elected specifically to represent them. Rather, each legislator elected from Polk County represented the county as a whole. When a citizen is faced with the task of selecting 11 representatives, as he was in Polk County, there is a serious question as to whether he discriminates among the various candidates in order to make a judgment of the candidate's qualifications. It places a severe strain on the voter's capacity.

While we hold the 1965 temporary reapportionment plan is sufficient for the 1966 elections, this record leads us to the conclusion that in order to provide equal protection of the laws, subdistricting is necessary in Polk County thereafter. The constitutional provisions determined in Division IX, supra, apply to all multi-member districts where invidious discrimination exists leading to the conclusion that equal protection rights are violated, and are not limited to Polk County.

It is our opinion that a special session of the legislature is not necessary to accomplish this objective. The Sixty-second General Assembly of Iowa will have the power to and is the appropriate body to provide such subdistricting.

Reapportionment is primarily a matter for legislative consideration and determination, and judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so. Reynolds v. Sims, supra, 377 U.S., at 586, 84 S. Ct., at 1394.

The decided cases, almost without exception, recognize that state instrumentalities should be afforded a reason-

able opportunity to reapportion themselves along constitutional lines. Davis v. Synhorst, supra, 217 F. Supp., at 505.

Progress has been made by the legislature since the decision in the first of the four federal cases involving reapportionment in Iowa, and we have every reason to believe the next session of the General Assembly of Iowa will promptly enact such legislation.

The Iowa legislature must approach their assignment with the understanding they are to create districts for each legislative branch which are as nearly equal in population as is practicable. This is the basic concept. We repeat, mathematical exactness or precision is hardly a workable constitutional requirement. Reynolds v. Sims, supra, 377 U.S., at 577, 84 S. Ct., at 1390. We do not attempt to state in mathematical language the constitutionally permissible bounds of discretion in deviating from apportionment according to population. It is neither practicable nor desirable to establish rigid mathematical standards. Rather, the proper judicial approach, is to ascertain whether there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination. Roman v. Sincock, supra, 377 U.S., at 710, 84 S. Ct., at 1470.

For a discussion as to the population variances considered in Reynolds v. Sims, supra, and other companion cases of the same day, we refer to Davis v. Cameron, supra, 238 F. Supp., at 464.

We also refer to the four federal cases from the southern district of Iowa as well as Honsey v. Donovan, 236 F. Supp. 8 (D.C.D. Minn. 4th Div., December 4, 1964), for some additional legislative guidelines.

We retain jurisdiction to consider prescribing an interim plan of reapportionment providing for subdistricting in Polk County in the event it becomes apparent that no substantial progress is being made by the Sixty-second General Assembly to provide such subdistricting.

To summarize the foregoing opinion:

1. The equal protection clause of the state and federal constitutions requires substantially equal legislative representation for all citizens of a state. This is the basic concept.

2. The 1965 temporary apportionment plan contains objections to both state and federal standards required for equal protection as disclosed by the record in Polk County, the only multi-member district before us in this case.

3. Subdistricting is required in Polk County after the 1966 elections.

4. A special session of the Sixty-first General Assembly is not required to accomplish this objective.

5. The 1965 temporary reapportionment plan is sufficient to serve as an interim plan of apportionment.

6. Members of the Sixty-second General Assembly are to be elected in accordance with the terms and provisions of Senate File 568, chapter 88, Laws Sixty-first General Assembly of Iowa (1965 temporary apportionment plan).

7. The Sixty-second General Assembly of Iowa will have the power to and is the appropriate body to provide such subdistricting.

8. The equal protection clause requires that a state make an honest and good faith effort to construct districts, in both houses of the legislature, as nearly of equal population as is practicable.

9. But mathematical exactness or precision is hardly a workable constitutional requirement. And it is neither practicable nor desirable to establish rigid mathematical standards. Rather, the proper judicial approach, is to ascertain whether there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination.

10. So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible.

11. Universal equality is not the test; there is room for other considerations.

12. The burden of proving a legislative enactment to be violative of the constitution rests upon those so asserting to the degree of negativing every reasonable basis of support therefor.

13. Jurisdiction of the court in this case is retained.

XIV. Defendants' motion to strike matters from appellants' brief ordered submitted with this appeal is overruled.

Costs are taxed one-third to plaintiffs and two-thirds to defendants.

Affirmed in part and reversed in part.

STUART, J.—We cannot agree with Divisions IX and XII of the principal opinion by Justice Mason. It follows that we must also take exception to certain statements contained in Division XIII related thereto. As a majority

of the court favors the view expressed herein, Divisions IXA and IXB, which follow, replace Division IX in the principal opinion as the opinion of the court on the issues therein discussed.

IXA. Appellants contend the 1965 temporary reapportionment plan which includes both multi-member and single-member districts in each house of the legislature violates Article I, section 6 of the Bill of Rights of the Constitution of the State of Iowa, which provides:

"All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

The citizens whose rights are at issue here are divided into two classes. (1) Those who reside in single-member districts and (2) those who reside in multi-member districts. We must examine the temporary plan to determine if it has equal operation between these two classes and whether one class has privileges and immunities not available to the other.

The problem facing us here is well illustrated by the situation which exists in metropolitan Des Moines. Residential areas to the south of Des Moines extend into Warren County. A person on the south side of the road, living in Warren County can vote for only one senator and one representative. His neighbor across the road to the north, living in Polk County can vote for five senators and eleven representatives. The resident of Warren County can vote for 1/61st of the senate and 1/124th of the house. The resident of Polk County can vote for 1/12th of the senate and 1/11th of the house.

There mere statement of this example discloses the basic unfairness, inequality and lack of uniformity inherent in such a scheme of legislative apportionment. The inequalities are not just theoretical. Equal voting power for all citizens is the goal. Proposed legislation requires a majority vote of the members of each house to become a law. It is a political reality that legislators are much more inclined to listen to and support a constitutent than an outsider with the same problem. It is equally basic that much legislative work is done by committees and there is a distinct advantage in having one's own representative sitting as a member of a committee considering legislation in which one has an interest. A resident of Polk County has 1/12th of the senate and 1/11th of the house which will listen to his problems with a sympathetic ear. A resident of Warren County can expect the same attention from only 1/61st of the senate and 1/124th of the house. Particularly in personal interest legislation, the resident of Polk County has an unfair and unequal advantage over the resident of Warren County or of any other single-member district. He has a much greater opportunity to find legislators to espouse his cause and a much greater chance that one or more of his representatives will be on the committee to which his legislation is assigned. His voting power is much greater.

Any scheme of legislative apportionment in which there are multi-member districts and single-member districts in the same house impairs the right of a resident of a single-member district to have the laws operate uniformly as guaranteed by section 6, Article I of the Constitution of Iowa. Such impairment violates his constitutional rights unless it can be shown such peculiar circumstances exist that a rational plant of apportionment cannot be achieved by using all single-member districts. We

do not foreclose the possibility that in some instances there may be legitimate considerations which would make some multi-member districts constitutionally permissible.

IXB. Appellants also argue this temporary plan violates the Equal Protection Clause of the 14th Amendment to the Constitution of the United States.

The Supreme Court has clearly indicated that perfect equality among voters would require that each citizen's vote be of the same weight and effect as the vote of every other citizen. Any plan of representation which deviates sufficiently from that goal is said to be "invidiously discriminatory" and to violate the Equal Protection Clause of the 14th Amendment to the United States Constitution. In Gray v. Sanders (March 1963), 372 U.S. 368, 379-381, 9 L.Ed. 2d 281, 83 S. Ct. 801, Mr. Justice Douglas, speaking for the majority of the court, said: "The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his state, when he casts his ballot in favor of one of several competing candidates underlies many of our decisions. * * * The conception of political equality from the Declaration of Independence to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing—one person, one vote."

In Reynolds v. Sims (June 15, 1964), 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 506, and five other cases handed down the same date, the Supreme Court applied the principles set forth in Gray v. Sanders to the apportionment of state legislatures and concluded "that the Equal Protection Clause requires both houses of a state legislature to be apportioned on a population basis". 576, L.Ed. 535. The court recognized the impossibility of "mathematical exact-

ness and precision" and stated: "So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature" (p. 579, L.Ed. 537).

However, as pointed out in the dissent of Justice Harlan, in Reynolds v. Sims, p. 622, L.Ed. 562, the six cases filed June 15, 1964, ruled out as legitimate considerations "(1) history; (2) 'economic or other sorts of group interests'; (3) 'area'; (4) geographical considerations; (5) a desire 'to insure effective representation for sparsely settled areas'; (6) 'availability of access of citizens to their representatives'; (7) theories of bicameralism (except those approved by the court); (8) occupation; (9) 'an attempt to balance urban and rural power'; (10) the preference of a majority of voters in the state."

The only two "legitimate considerations" suggested are a "legislative desire to maintain the integrity of various political sub-divisions, insofar as posible", Reynolds v. Sims, p. 578, L.Ed. 537 and a "reasonable plan for periodic revision of their apportionment schemes". Supra, p. 583, L.Ed. 539.

We must apply these principles to the factual situation set out in IXA relating to Article I, section 6 of the Constitution of Iowa. Is Equal Protection afforded when one citizen votes for 1/61st of the senate and 1/124th of the house and another citizen votes for 1/12th of the senate and 1/11th of the house? We don't believe it is.

The appellees rely on Davis v. Cameron, 238 F. Supp. 462, 466; Reynolds v. Sims, 377 U.S. 533, 86 S.Ct. 1362, 12 L.Ed.2d 506; Lucas v. Colorado General Assembly, 377 U.S.

713, 84 S.Ct. 1459, 12 L.Ed.2d 632; and Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, L.Ed.2d .

In Davis v. Cameron, supra, appellant's argument here was presented to the three judge federal court in Iowa. It was rejected without analysis, discussion or explanation on the authority of Fortson v. Dorsey, Supra.

In Fortson v. Dorsey, supra, the legislative scheme in question divided some counties into districts and provided: "Each Senator must be a resident of his own Senatorial District and shall be elected by the voters of his own district, except that the Senators from those Senatorial Districts consisting of less than one county shall be elected by all the voters of the county in which such Senatorial District is located."

The case considered only whether the rights of the residents of the multi-district counties were protected. It was claimed the scheme was defective because county-wide voting in multi-district counties could thrust upon the voters of a district a senator for whom no one in the district had voted. This argument was rejected although the court recognized a multi-member district might in a particular instance violate the Equal Protection Clause. As all voters within the district had equal voting rights, any denial of equal protection must necessarily have depended on the facts. The argument before us here was not considered.

In Fortson v. Dorsey, the court cited as authority the dictum from Reynolds v. Sims set forth in the majority opinion. These statements have been classified as "rather casual dictum" (63 Mich. L.R. 219. Dec. 1964). The problem confronting us here was not before the court at that time. Arguments advanced here were not considered.

In Lucas v. Colorado General Assembly, supra, the Supreme Court pointed out the undesirable features of a multi-member district as it affected the residents of the district. There was no argument made as to the effect on citizens of single-member districts.

Although these cases intimate that the combination of multi-member and single-member districts does not violate the Equal Protection Clause, they have not considered the problem from the standpoint of the resident of a single-member district. The court has never viewed the problem in the light of the one man-one vote concept. No one has ever explained why a scheme which seems to be a patent violation of the one man-one vote concept does not offend the Equal Protection Clause. In view of the deep concern the Supreme Court has repeatedly shown for the rights of the individual and for ultimate fairness, we believe it will hold such scheme violates the Equal Protection Clause when the argument here advanced is presented. Consistent application of the principles announced in Reynolds v. Sims seems to compel that result.

The Supreme Court said in Gray v. Sanders, 372 U.S. 368, 379, 9 L.Ed.2d 821, 829, 83 S. Ct. 801: "How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment." It is just as unconstitutional for a person residing in an urban area to have 11 times the voting power of a person residing in a rural area as it is to have the voting power reversed.

The one man-one vote principle, as it applies to legislatures, is thoroughly explored by Mr. Chief Justice Warren in Reynolds v. Sims. Many of his statements contained therein are particularly applicable to this situation. The page references are to the L.Ed.

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise" (p. 523, 524).

"A predominant consideration in determining whether a State's legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature" (p. 527).

"And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. *It would appear extraordinary to suggest that a state could be constitutionally permitted to enact a law providing that certain of the state's voters could vote, two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once.* And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five or 10, while the votes of

persons in another area would be counted only at face value, could be constitutionally sustainable" (p. 527-528). (Emphasis added)

"Weighting the votes of citizens differently, by any method of means, merely because of where they happen to reside, hardly seems justifiable" (p. 528).

"And the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. * * * Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, * * *" (p. 229, 230).

"However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of the state's citizens merely because of where they happen to reside." W.M.C.A. v. Lomenzo, 377 U.S. 633, 84 S.Ct. 1362, 12 L.Ed. 2d 568.

Attention could be called to many other similar statements but those set out indicate the thinking of the Supreme Court and the application here is obvious.

Argument has been made that the voter in a single-member district has a greater influence with his one leg-

islator who may only have 30,000 constituents than a voter with eleven legislators who have 300,000 constituents. Assuming this is true for the purpose of argument, it only offers evidence of a factor to consider in determining whether residents within the multi-member district are also denied equal protection of the laws. We know of no rule whereby the denial of equal protection to one class for one reason can be set off against the denial of equal protection to another class for a different reason in such a manner as to make an apportionment plan constitutional.

Argument is also advanced that equal protection is accomplished because in Polk County approximately 1/12th of the population votes for 1/12th of the legislature and in Warren County approximately 1/120th of the population votes for 1/120th of the house and in Warren and Marion Counties 1/60th of the population votes for 1/60th of the senate. Such an arrangement may meet the population limitations of equal protection but it certainly does not protect the rights of the individual who is the primary beneficiary of the Equal Protection Clause. One twelfth or 1/120th of the population has no definable or recognizable rights, privileges, opinions or positions as such. It is the individual within the fraction of the population who is entitled to protection. This is not achieved by lumping him in with 299,999 other people. This is not one man-one vote. "A citizen's constitutional rights can hardly be infringed simply because a majority (or 1/12th) of the people choose to do so." Lucas v. Colorado General Assembly, 377 U.S. 713, 84 S. Ct. 1459, 12 L.Ed.2d 632.

A point is made of the fact that historically the Iowa legislature has had multi-member districts. This is true. We have not, heretofore, been called upon to pass on their

constitutionality. As long as Iowa was basically an agricultural state, there was no problem. The need to reapportion our legislature developed out of the industrialization and farm mechanization which have occurred in the last 30 years. During that period the constitution has not permitted more than two-member districts. No county has been allowed more than one senator.

Attention has been concentrated on multi-member districts and districts of unequal population since the United States Supreme Court's one man-one vote decisions. Prior to those decisions, it was thought the states had a right to consider factors other than population in apportioning their legislatures. Now the "legitimate considerations" are quite restricted. Equal application of the one man-one vote concept limits the legislature's right to establish multi-member districts to the same extent it is prohibited from departing from the equal population requirement by the Supreme Court decisions.

Only in Pennsylvania has the one man-one vote argument been considered by the courts. In Drew v. Scranton, 229 F. Supp. 310, a special three judge court considering the apportionment plan for Pennsylvania was confronted with a "haphazard arrangement of two, three and four-member districts alongside of single-member districts". The court said: "we think that invidious discrimination in voting power results when, as in the case before us, some Pennsylvania voters may by reason of the arrangement of legislative districts vote for two, three or even four representatives, while others are restricted to voting for one only. Certainly a voter in a four-member district will not only have four votes for representative, but he will also have four members of the House who will be especially concerned with his views and interests and amenable to his persuasion, since they will want the benefit of his suffrage

for re-election. The voter in a single-member district, however, will have only one representative to look to express his views and espouse his interests. We are, of course, not dealing here with a case where all the representatives are elected at large, so that each voter has the same number of votes as every other voter, or with a situation where the districts all elect the same number of members, whether two or more. Those situations do not violate the principle of one man-one vote. But we think that this principle means what it says. It does not mean, for example, in Allegheny County one man-one vote in McKeesport, two votes in Clairton, three votes in Wilkinsburg and four votes in Sewickley, which the statute under consideration authorizes."

They held "that the provisions of the representative apportionment act for multi-member districts in certain parts of certain counties deny to the voters in single member districts of those and other counties the equal protection of the laws by depriving them of voting power equal to that of the voters of the multi-member districts" (p. 328). The Supreme Court vacated this judgment for other reasons.

In Butcher v. Bloom (Sept. 1964), 203 A.2d 556, 573, the Supreme Court of Pennsylvania in setting guidelines for the legislature considered "it would be more prudent to approach the matter of apportionment by setting up single-member districts unless valid and compelling reasons exist which require the creation of some multi-member districts" but did not believe multi-member districts and single-member districts combined violated the Federal Constitution. However, for the reasons set out above, we believe single-member districts are as essential to the protection of an individual's rights under the Equal Protection Clause as are equally populated districts.

If the Equal Protection Clause is violated when certain representatives are given an unequal number of constituents, the converse is also true. The Equal Protection Clause is violated if certain constituents are given an unequal number of representatives.

The Supreme Court recognized in Reynolds v. Sims, supra, that mathematical precision was not a workable constitutional requirement. "So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal population principle are constitutionally permissible." The same legitimate considerations which would make multi-member districts constitutionally permissible under the Iowa Constitution apply here. We believe it difficult, if not impossible, however, to justify constitutionally, a multi-member district in which the ratio of members therein to a single-member district exceeds the variance in population between districts which has been approved by the United States Supreme Court.

We therefore hold that the 1965 temporary reapportionment plan violates section 6, Article I of the Constitution of Iowa and the 14th Amendment to the Constitution of the United States.

XII. We do not agree with Division XII of the principal opinion and would eliminate it.

XIII. We agree with that portion of Division XIII of the principal opinion which holds the 1965 temporary plan denies equal protection to the residents of Polk County. We also agree the legislature should be given further opportunity to work out a constitutional apportionment plan and jurisdiction should be retained in the event it is unable to do so.

Because the determination of constitutional principles in Division IX of Judge Mason's opinion differs from our determination in IXA and IXB, we believe it necessary to make it clear these Divisions also apply to all multi-member districts and are not limited to Polk County.

We also believe the reasons for deciding to permit an election under the 1965 temporary plan should be amplified. It would be most difficult for the 61st General Assembly to meet and formulate a plan in time for the primary elections to be held this year. Special elections would have to be called to fill vacancies. There is a possibility this decision will be appealed to the Supreme Court, which would require a stay. The 61st General Assembly has the same constitutional deficiencies determined by this decision to exist in the 1965 temporary plan. In addition to this fact, it does not conform as closely to the population requirement as the 1965 temporary plan.

The United States Supreme Court has recognized the difficulty presented in such situations. In Reynolds v. Sims, supra, the court said: "In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely on general equitable principles." The lower courts were directed to determine the equities in each situation in W.M.C.A. v. Lomenzo, supra, Roman v. Sincock, supra, and Lucas v. Colorado General Assembly, supra. As a matter of equity and in light of all the circumstances set forth above, we conclude orderly reapportionment can best be accomplished by permitting the 62nd General Assembly to be elected under the 1965 temporary reapportionment plan set forth in chapter 88, Laws of 61st General Assembly.

We also disagree with statements in the summary contained in Division XIII which are in conflict with this opinion.

We reverse the trial court for the reasons expressed in Divisions IXA and IXB as well as for the reasons expressed in the principal opinion.

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LARSON, J.—concurring specially:

I am unable to agree with the majority conclusion in Division X that sections 34, 35 and 36, of Article III, of the State Constitution are inseparable, and that there is no valid constitutional requirement today that the Iowa Senate be composed of 50 members.

I agree that the rules of construction and interpretation applicable to statutes on separability also apply to constitutional questions. State v. Chicago, B. & Q. R. Co., 195 Mo. 228, 93 S. W. 784. But I do not agree that the federal court holding in Davis v. Synhorst, 217 F. Supp. 402, that these sections were inseparable was necessary or correct.

As I understand the generally-acknowledged rules applicable to separability, the courts are reluctant and slow to declare an entire act of the legislature unconstitutional if for some reason a part thereof is invalid and violence to the general intent will not be done by such a severance. In other words, the court must, if possible, save the good and only eliminate the bad, if the good can stand by itself. This rule the majority seems to recognize by the reference to 16 Am. Jur. 2d, Constitutional Law, section 42, but there again this authority clearly states, "unless it is obvious that the intent of the adopters of the amendment was to accept one general scheme in an entirety", the valid portions may

be saved. I would hold sections 34 and 35 of the 1904 amendment are separable, that on its face it is not obvious the adopters thereof intended all or none of the amendments be accepted, and that section 34 complied perfectly with the requirements of the Equal Protection Clause of the Federal Constitution, as well as Article I, section 6, of the State Constitution, for the upper house of a bicameral state legislature. It is obvious the adopters desired that each house thereafter be considered separately, not as it had been under the 1846 Constitution where a single section, 31, set out both the number of senators and representatives to be chosen and provided how they were to be apportioned in both houses.

I think it is significant here that the apportionment and number in each house were dealt with separately. There is not the slightest hint that the apportionment in one house is dependent upon or reflected in the other. Section 34 of the 1904 amendment provided: "The senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census." Proponents of change would be hard-pressed to draw, even today, a provision for the senate that would better conform to the requirements of the Federal Constitution as construed by the federal courts.

Admittedly, section 35 of the 1904 amendment was bad and, as section 36 is inseparable with it, both must fall. Section 35 dealt with the apportionment of the house alone and thus can be stricken without doing violence to the adopters' intent as to the senate. As bearing on this question, see comments in Lucas v. Colorado General Assembly,

377 U. S. 713, 12 L. ed. 2d 632, 646, 84 S. Ct. 1472, where the question of severability was considered and the court's position was announced in Maryland Committee v. Tawes, 377 U. S. 673, 12 L. ed. 2d 606. The court said it would have to consider the constitutionality of the apportionment plan as a whole where deviations from a strict population basis existed. If the scheme allowed a slight deviation in both houses so that they might be accumulative to the disadvantage of certain areas, then the *whole* plan might fail. Obviously such a situation would not result from the 1904 amendment adopted in Iowa, since section 34 is based solely on population. I, therefore, would hold the provisions of section 34 must be allowed to stand.

Such a decision would, of course, produce a conflict with the temporary plan used in the previous election and contemplated for 1966, where 57 senate seats are involved. This might be a logical basis to require a special session of the legislature before the 1966 election. However, due to the shortness of time and the history of this litigation, I am satisfied the temporary plan should be followed for the 1966 election but no further, and that the provision of section 34 fixing the number of senators at 50, and providing for their method of election, should be followed thereafter until altered by a proper constitutional amendment.

I have said nothing about the 1928 amendment which obviously made section 34 bad. As the three sections then stood, they were all invidiously discriminatory and the federal court should have so determined the issue on that basis. However, we can and should strike the 1928 amendment to section 34 which provided, "but no county shall be entitled to more than one (1) senator", as in conflict with Article I, Section 6, and with the Federal Equal Protection Clause. This would permit section 34, Article III, of the

State Constitution, as adopted in 1904, to stand, and require only a new plan of apportionment for the house in this state. I would so hold.

APPENDIX C

SENATE FILE 568

AN ACT

TO PROVIDE FOR REPRESENTATION IN THE SENATE AND HOUSE OF REPRESENTATIVES IN THE SIXTY-SECOND GENERAL ASSEMBLY AND THEREAFTER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Chapter one (1), Acts of the Sixtieth General Assembly in Extraordinary Session, is hereby repealed.

Sec. 2. The general assembly hereby determines that in order to provide fair representation for all citizens of Iowa in the interim period before a constitutional amendment becomes effective, the apportionment of the general assembly shall be based upon the following principles:

1. The house of representatives shall be apportioned on a population basis.

2. The senate shall be apportioned on a fair and reasonable basis, taking into account population to guarantee citizens of the state fair and equal representation. In order to give proper recognition to such principals, the following shall apply:

a. Any county having more than thirty-five thousand (35,000) population shall be a senatorial district and shall be entitled to one (1) senator. In addition, each county having a population of seventy thousand (70,000) or more shall be entitled to such additional senators as shall guarantee fair and equal representation to the citizens of such counties.

b. No county having less than thirty-five thousand (35,000) population shall be joined in a senatorial district with any county having more than thirty-five thousand (35,000) population.

c. No senatorial district shall contain more than four (4) counties.

d. The counties having less than thirty-five thousand (35,000) population shall be joined in senatorial districts of two (2) counties, three (3) counties, or four (4) counties. In forming such districts, counties whose people have a high degree of common interests shall be joined together when practicable.

The general assembly hereby declares that the foregoing principles have been followed in this Act and that the provisions of this Act are necessary and reasonable in order to provide fair representation in the general assembly for all citizens of Iowa.

Sec. 3. The number of senators in the general assembly is hereby fixed at sixty-one (61) and they are hereby apportioned among the several counties as follows:

1. Lee county shall constitute the first district with one (1) senator.

2. Davis county, Jefferson county, and Van Buren county shall constitute the second district with one (1) senator.

3. Appanoose county, Lucas county, and Monroe county shall constitute the third district with one (1) senator.

4. Clarke county, Decatur county, Ringgold county, and Wayne county shall constitute the fourth district with one (1) senator.

5. Adams county, Montgomery county, Taylor county, and Union county shall constitute the fifth district with one (1) senator.

6. Fremont county, Mills county, and Page county shall constitute the sixth district with one (1) senator.

7. Des Moines county shall constitute the seventh district with one (1) senator.

8. Henry county, Louisa county, and Washington county shall constitute the eighth district with one (1) senator.

9. Wapello county shall constitute the ninth district with one (1) senator.

10. Keokuk county and Mahaska county shall constitute the tenth district with one (1) senator.

11. Marion county and Warren county shall constitute the eleventh district with one (1) senator.

12. Adair county, Cass county, and Madison county shall constitute the twelfth district with one (1) senator.

13. Pottawattamie county shall constitute the thirteenth district with two (2) senators.

14. Cedar county and Muscatine county shall constitute the fourteenth district with one (1) senator.

15. Scott county shall constitute the fifteenth district with two (2) senators.

16. Clinton county shall constitute the sixteenth district with one (1) senator.

17. Johnson county shall constitute the seventeenth district with one (1) senator.

18. Iowa county and Poweshiek county shall constitute the eighteenth district with one (1) senator.

19. Jasper county shall constitute the nineteenth district with one (1) senator.

20. Polk county shall constitute the twentieth district with five (5) senators.

21. Audubon county, Dallas county, and Guthrie county shall constitute the twenty-first district with one (1) senator.

22. Harrison county, Monona county, and Shelby county shall constitute the twenty-second district with one (1) senator.

23. Jackson county and Jones county shall constitute the twenty-third district with one (1) senator.

24. Linn county shall constitute the twenty-fourth district with three (3) senators.

25. Benton county and Tama county shall constitute the twenty-fifth district with one (1) senator.

26. Marshall county shall constitute the twenty-sixth district with one (1) senator.

27. Story county shall constitute the twenty-seventh district with one (1) senator.

28. Boone county and Greene county shall constitute the twenty-eighth district with one (1) senator.

29. Carroll county and Crawford county shall constitute the twenty-ninth district with one (1) senator.

30. Dubuque county shall constitute the thirtieth district with two (2) senators.

31. Buchanan county and Delaware county shall constitute the thirty-first district with one (1) senator.

32. Black Hawk county shall constitute the thirty-second district with three (3) senators.

33. Franklin county, Grundy county, and Hardin county shall constitute the thirty-third district with one (1) senator.

34. Hamilton county and Wright county shall constitute the thirty-fourth district with one (1) senator.

35. Webster county shall constitute the thirty-fifth district with one (1) senator.

36. Calhoun county, Ida county, and Sac county shall constitute the thirty-sixth district with one (1) senator.

37. Woodbury county shall constitute the thirty-seventh district with two (2) senators.

38. Allamakee county and Clayton county shall constitute the thirty-eighth district with one (1) senator.

39. Fayette county and Winneshiek county shall constitute the thirty-ninth district with one (1) senator.

40. Bremer county, Chickasaw county, and Howard county shall constitute the fortieth district with one (1) senator.

41. Butler county, Floyd county, and Mitchell county shall constitute the forty-first district with one (1) senator.

42. Cerro Gordo county shall constitute the forty-second district with one (1) senator.

43. Hancock county, Winnebago county, and Worth county shall constitute the forty-third district with one (1) senator.

44. Humboldt county and Kossuth county shall constitute the forty-fourth district with one (1) senator.

45. Emmet county, Palo Alto county, and Pocahontas county shall constitute the forty-fifth district with one (1) senator.

46. Buena Vista county and Clay county shall constitute the forty-sixth district with one (1) senator.

47. Cherokee county and Plymouth county shall constitute the forty-seventh district with one (1) senator.

48. Dickinson county, O'Brien county, and Osceola county shall constitute the forty-eighth district with one (1) senator.

49. Lyon county and Sioux county shall constitute the forty-ninth district with one (1) senator.

This Act shall be effective as to the nomination and election of one (1) senator, except as otherwise indicated, from each of the following districts in the year 1966 and thereafter for four-year terms each:

First (1st)
Sixth (6th)
Seventh (7th)
Eighth (8th)
Ninth (9th)
Thirteenth (13th)
Fourteenth (14th)
Fifteenth (15th)
Sixteenth (16th)
Eighteenth (18th)
Nineteenth (19th)
Twentieth (20th) (three to be elected)
Twenty-second (22nd)
Twenty-third (23rd)
Twenty-fourth (24th) (two to be elected)

Twenty-fifth (25th)
Twenty-seventh (27th)
Twenty-ninth (29th)
Thirtieth (30th) (two to be elected)
Thirty-second (32nd) (two to be elected)
Thirty-third (33rd)
Thirty-fourth (34th)
Thirty-sixth (36th)
Thirty-seventh (37th)
Fortieth (40th)

This Act shall be effective as to the nomination and election of one (1) senator from the following district in the year 1966 for a two-year term:

Twentieth (20th)

The terms of senators elected in 1964 for terms of four (4) years or elected subsequently to fill a vacancy in any such term shall continue until December 31, 1968. In the year 1968 and thereafter one (1) senator, except as otherwise indicated, shall be nominated and elected from each of the following districts for four-year terms each:

Second (2nd)
Third (3rd)
Fourth (4th)
Fifth (5th)
Tenth (10th)
Eleventh (11th)
Twelfth (12th)
Thirteenth (13th)
Fifteenth (15th)
Seventeenth (17th)

Twentieth (20th) (two to be elected)
Twenty-first (21st)
Twenty-fourth (24th)
Twenty-sixth (26th)
Twenty-eighth (28th)
Thirty-first (31st)
Thirty-second (32nd)
Thirty-fifth (35th)
Thirty-seventh (37th)
Thirty-eighth (38th)
Thirty-ninth (39th)
Forty-first (41st)
Forty-second (42nd)
Forty-third (43rd)
Forty-fourth (44th)
Forty-fifth (45th)
Forty-sixth (46th)
Forty-seventh (47th)
Forty-eighth (48th)
Forty-ninth (49th)

For the legislative session in 1967 and at any special session thereafter prior to 1969 the following counties are hereby attached for the purpose of representation in the senate to the present districts designated opposite the name of the county:

Jefferson to the second (2nd)
Appanoose to the third (3rd)
Clarke and Wayne to the fourth (4th)
Union to the fifth (5th)
Cass to the thirteenth (13th)

Audubon to the twenty-ninth (29th)
Mitchell and Floyd to the forty-second (42nd)
Worth to the forty-seventh (47th)
Pocahontas to the forty-eighth (48th)
Dickinson to the forty-ninth (49th)
Buena Vista to the fifty-first (51st).

Sec. 4. The house of representatives shall be apportioned on a population basis as follows and representatives shall be elected in 1966 and each two (2) years thereafter:

The counties of Lyon and Osceola shall comprise one (1) district and elect one (1) representative.

The counties of Dickinson and Clay shall comprise one (1) district and elect one (1) representative.

The counties of Emmet and Palo Alto shall comprise one (1) district and elect one (1) representative.

The counties of Winnebago and Worth shall comprise one (1) district and elect one (1) representative.

The counties of Mitchell and Howard shall comprise one (1) district and elect one (1) representative.

The counties of Pocahontas and Humboldt shall comprise one (1) district and elect one (1) representative.

The counties of Ida and Sac shall comprise one (1) district and elect one (1) representative.

The counties of Audubon and Guthrie shall comprise one (1) district and elect one (1) representative.

The counties of Adair and Madison shall comprise one (1) district and elect one (1) representative.

The counties of Mills and Fremont shall comprise one (1) district and elect one (1) representative.

The counties of Montgomery and Adams shall comprise one (1) district and elect one (1) representative.

The counties of Taylor and Ringgold shall comprise one (1) district and elect one (1) representative.

The counties of Union and Clarke shall comprise one (1) district and elect one (1) representative.

The counties of Decatur and Wayne shall comprise one (1) district and elect one (1) representative.

The counties of Lucas and Monroe shall comprise one (1) district and elect one (1) representative.

The counties of Appanoose and Davis shall comprise one (1) district and elect one (1) representative.

The counties of Jefferson and Van Buren shall comprise one (1) district and elect one (1) representative.

The counties of Louisa and Muscatine shall comprise one (1) district and elect two (2) representatives.

The counties of Cerro Gordo, Webster, Story, Jasper, Johnson, Clinton, Wapello, Marshall, Des Moines, and Lee shall comprise one (1) district each and each shall elect two (2) representatives.

The county of Dubuque shall comprise one (1) district and shall elect three (3) representatives.

The county of Pottawattamie shall comprise one (1) district and shall elect four (4) representatives.

The counties of Scott, Woodbury, and Black Hawk shall comprise one (1) district each and each shall elect five (5) representatives.

The county of Linn shall comprise one (1) district and shall elect six (6) representatives.

The county of Polk shall comprise one (1) district and shall elect eleven (11) representatives.

All other counties shall comprise one (1) district each and each shall elect one (1) representative.

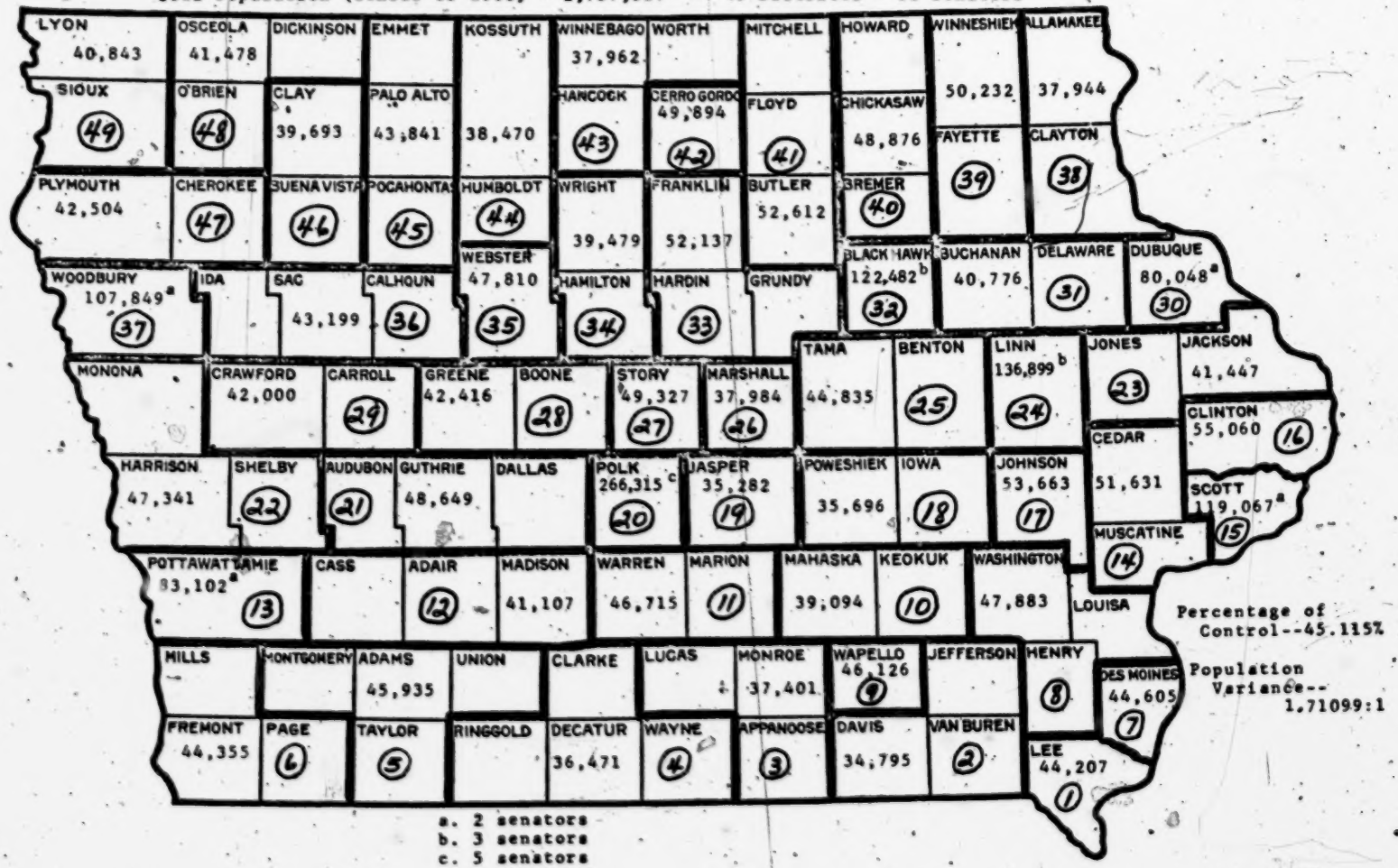
Robert D. Fulton
President of the Senate
Vincent B. Steffen
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 568, Sixty-first General Assembly.

Robert G. Moore
Secretary of the Senate

Approved _____, 1965.
Harold E. Hughes
Governor

IOWA SENATORIAL DISTRICTS--SENATE FILE 568, Sixty-first General Assembly
Iowa Population (Census of 1960) - 2,757,537 -- 49 Districts - 61 Senators



a. 2 senators
b. 3 senators
c. 5 senators

Percentage of Control--45.115%

Population Variance--1.71099:1

A83

HOUSE OF REPRESENTATIVES

Temporary Apportionment Plan Adopted by the 61st Iowa General Assembly and Known as Senate File 568

IOWA POPULATION (Census of 1960)—2,757,537

81 Districts—124 Representatives

District	Counties Within District	Population
1.	Lyon (14,468), Osceola (10,064)	24,532
2.	Dickinson (12,574), Clay (818,504)	31,078
3.	Emmet (14,871), Palo Alto (14,736)	29,607
4.	Winnebago (13,099), Worth (10,259)	23,358
5.	Mitchell (14,043), Howard (12,734)	26,777
6.	Pocahontas (14,234), Humboldt (13,156)	27,390
7.	Ida (10,269), Sac (17,007)	27,276
8.	Audubon (10,919), Guthrie (13,607)	24,526
9.	Adair (10,893), Madison (12,295)	23,188
10.	Mills (13,050), Fremont (10,282)	23,332
11.	Montgomery (14,467), Adams (7, 468)	21,935
12.	Taylor (10,288), Ringgold (7,910)	18,198
13.	Union (13,712), Clarke (8,222)	21,934
14.	Decatur (10,539), Wayne (9,800)	20,339
15.	Lucas (10,923), Monroe (10,463)	21,386
16.	Appanoose (16,015), Davis (9,199)	25,214
17.	Jefferson (15,818), Van Buren (9,778)	25,596
18.	Louisa—Muscatine (2 representatives)	44,130
19.	Cerro Gordo (2 representatives)	49,894
20.	Webster (2 representatives)	47,810
21.	Story (2 representatives)	49,327

District	Counties Within District	Population
22.	Jasper (2 representatives)	35,282
23.	Johnson (2 representatives)	53,663
24.	Clinton (2 representatives)	55,060
25.	Wapello (2 representatives)	46,126
26.	Marshall (2 representatives)	37,984
27.	Des Moines (2 representatives)	44,605
28.	Lee (2 representatives)	44,207
29.	Dubuque (3 representatives)	80,048
30.	Pottawattamie (4 representatives)	83,102
31.	Scott (5 representatives)	119,067
32.	Woodbury (5 representatives)	107,849
33.	Black Hawk (5 representatives)	122,482
34.	Linn (6 representatives)	136,899
35.	Polk (11 representatives)	266,315
36.	Kossuth	25,314
37.	Winneshiek	21,651
38.	Allamakee	15,982
39.	Sioux	26,375
40.	O'Brien	18,840
41.	Hancock	14,604
42.	Floyd	21,102
43.	Chickasaw	15,034
44.	Fayette	28,581
45.	Clayton	21,962
46.	Plymouth	23,906
47.	Cherokee	18,598

District	Counties Within District	Population
48.	Buena Vista	21,189
49.	Wright	19,447
50.	Franklin	15,472
51.	Butler	17,467
52.	Bremer	21,108
53.	Calhoun	15,923
54.	Hamilton	20,032
55.	Hardin	22,533
56.	Grundy	14,132
57.	Buchanan	22,293
58.	Delaware	18,483
59.	Monona	13,916
60.	Crawford	18,569
61.	Carroll	23,431
62.	Greene	14,379
63.	Boone	28,037
64.	Tama	21,413
65.	Benton	23,422
66.	Jones	20,693
67.	Jackson	20,754
68.	Harrison	17,600
69.	Shelby	15,825
70.	Dallas	24,123
71.	Poweshiek	19,300
72.	Iowa	16,396
73.	Cedar	17,791

District	Counties Within District	Population
74.	Cass	17,919
75.	Warren	20,829
76.	Marion	25,886
77.	Mahaska	23,602
78.	Keokuk	15,492
79.	Washington	19,406
80.	Henry	18,187
81.	Page	21,023

One state representative is elected from each of seventeen two-county representative districts.

One state representative is elected from each of forty-six one-county representative districts.

More than one state representative is elected from one two-county representative district.

More than one state representative is elected from each of seventeen one-county representative districts.

VARIATIONS IN POPULATION OF REPRESENTATIVE DISTRICTS

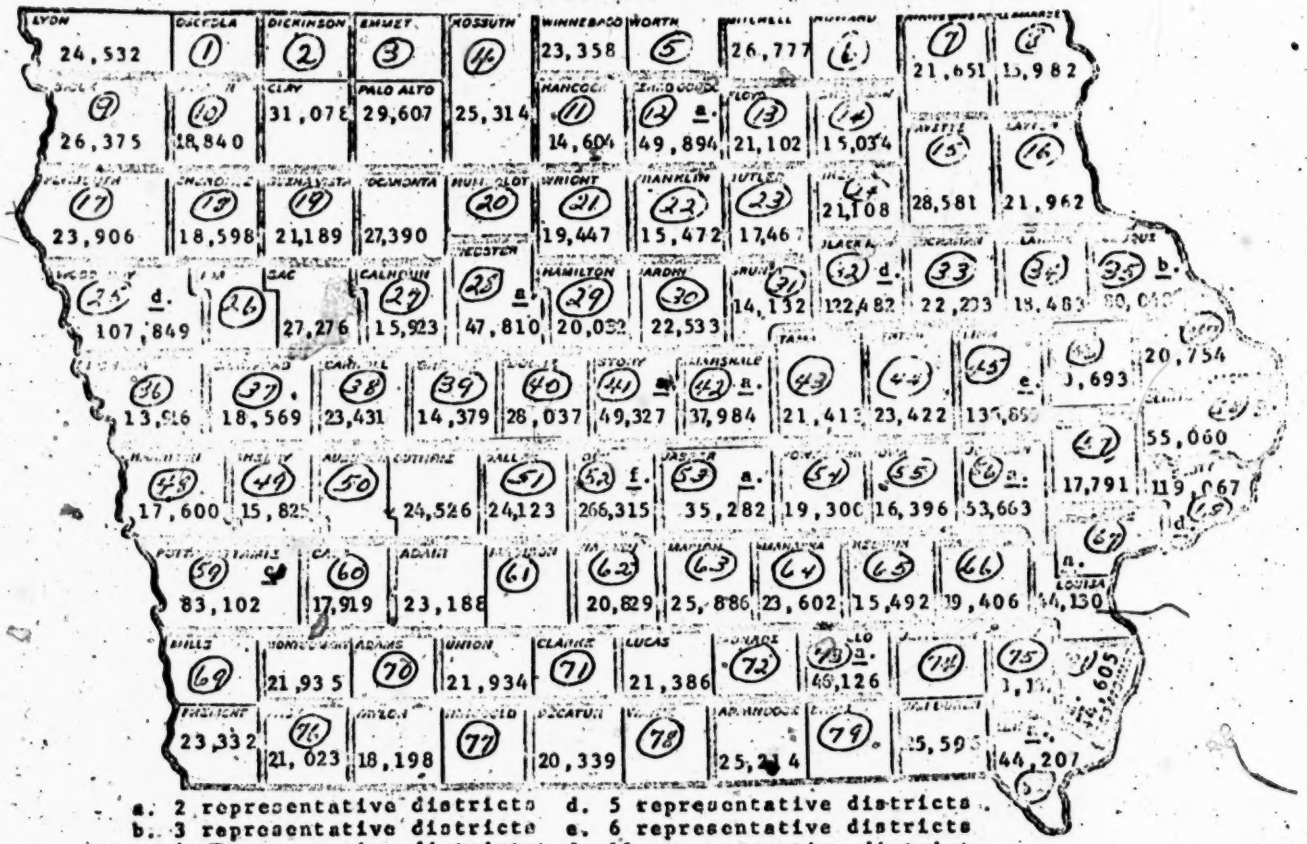
1. Single county districts electing one representative:
   a. Monona 13,916
   b. Fayette 28,581
2. Multi-county districts electing one representative:
   a. Taylor (10,288), Ringgold (7,910) 18,198
   b. Dickinson (12,574), Clay (18,504) 31,078

The seventeen most populous counties (Polk-Jasper) account for 1,379,720 residents or 50% of Iowa's population. These 17 counties receive 59 of the 124 House of Representative seats (47.6%) in this apportionment plan.

The 63 representatives who could theoretically control the 124 member House of Representatives represent 44.8% of the State's population. The number of residents represented by the 44.8% is 1,234,745.

As adopted from the Iowa Legislative Research Bureau report of April 17, 1964.

HOUSE OF REPRESENTATIVES
Temporary Apportionment Plan Adopted by Senate File 568
of the 61st Iowa General Assembly
Iowa Population (Census of 1960) - 2,757,537
81 Districts - 124 Representatives



a. 2 representative districts
b. 3 representative districts
c. 4 representative districts
d. 5 representative districts
e. 6 representative districts
f. 11 representative districts

A89

IOWA SENATORIAL DISTRICTS—SENATE FILE 568, 61st GENERAL ASSEMBLY

IOWA POPULATION (Census of 1960)—2,757,537
49 Districts—61 Senators

District	Counties Within District	Population
1.	Lee	44,207
2.	Davis (9,199), Jefferson (15,818) Van Buren (9,778)	34,795
3.	Appanoose (16,015), Lucas (10,923), Monroe (10,463)	37,401
4.	Clarke (8,222), Decatur (10,539), Ringgold (7,910), Wayne (9,800)	36,471
5.	Adams (7,468), Montgomery (14,467), Taylor (10,288), Union (13,712)	45,935
6.	Fremont (10,282), Mills (13,050), Page (21,023)	44,355
7.	Des Moines	44,605
8.	Henry (18,187), Louisa (10,290), Washington (19,406)	47,883
9.	Wapello	46,126
10.	Keokuk (15,492), Mahaska (23,602)	39,094
11.	Marion (25,886), Warren (20,829)	46,715
12.	Adair (10,893), Cass (17,919), Madison (12,295)	41,107
13.	Pottawattamie (2 Senators)	83,102
14.	Cedar (17,791), Muscatine (33,840)	51,631
15.	Scott (2 Senators)	119,067
16.	Clinton	55,060
17.	Johnson	53,663
18.	Iowa (16,396), Poweshiek (19,300)	35,696

District	Counties Within District	Population
19.	Jasper	35,282
20.	Polk (5 Senators)	266,315
21.	Audubon (10,919), Dallas (24,123), Guthrie (13,607)	48,649
22.	Harrison (17,600), Shelby (15,825), Monona (13,916)	47,341
23.	Jackson (20,754), Jones (20,693)	41,447
24.	Linn (3 Senators)	136,899
25.	Benton (23,422), Tama (21,413)	44,835
26.	Marshall	37,984
27.	Story	49,327
28.	Boone (28,037), Greene (14,379)	42,416
29.	Carroll (23,431), Crawford (18,569)	42,000
30.	Dubuque (2 Senators)	80,048
31.	Buchanan (22,293), Delaware (18,483)	40,776
32.	Black Hawk (3 Senators)	122,482
33.	Hardin (22,533), Franklin (15,472), Grundy (14,132)	52,137
34.	Hamilton (20,032), Wright (19,447)	39,479
35.	Webster	47,810
36.	Calhoun (15,923), Ida (10,269), Sac (17,007)	43,199
37.	Woodbury (2 Senators)	107,849
38.	Allamakee (15,982), Clayton (21,962)	37,944
39.	Fayette (28,581), Winneshiek (21,651)	50,232
40.	Bremer (21,108), Chickasaw (15,034), Howard (12,734)	48,876

District	Counties Within District	Population
41.	Floyd (21,102), Mitchell (14,043), Butler (17,467)	52,612
42.	Cerro Gordo	49,894
43.	Hancock (14,604), Winnebago (13,099), Worth (10,259)	37,962
44.	Humboldt (13,156), Kossuth (25,314)	38,470
45.	Emmet (14,871), Palo Alto (14,736), Pocahontas (14,234)	43,841
46.	Buena Vista (21,189), Clay (18,504)	39,693
47.	Cherokee (18,598), Plymouth (23,906)	42,504
48.	Dickinson (12,574), O'Brien (18,840), Osceola (10,064)	41,478
49.	Lyon (14,468), Sioux (26,375)	40,843

One state senator is elected from each of two four-county senatorial districts.

One state senator is elected from each of fourteen three-county senatorial districts.

One state senator is elected from each of sixteen two-county senatorial districts.

One state senator is elected from each of ten single-county senatorial districts.

More than one senator is elected from each of seven single-county senatorial districts.

DISTRICTS ELECTING MORE THAN ONE SENATOR

County	Total Population	No. of Senators	No. of Persons Represented by Each Senator
Dubuque	80,048	2	40,024
Pottawattamie	83,102	2	41,551
Woodbury	107,849	2	53,925
Scott	119,067	2	59,534
Black Hawk	122,482	3	40,827
Linn	136,899	3	45,633
Polk	266,315	5	53,263
	895,762		

VARIATIONS IN POPULATION OF SENATORIAL DISTRICTS

1. All districts:	
a. Davis (9,199), Jefferson (15,818), Van Buren (9,778)	34,795
b. Scott	59,534
2. Single-county districts electing more than one Senator:	
a. Dubuque (2 Senators)	40,024[1]
b. Scott (2 Senators)	59,534[1]
3. Singly-county districts electing one Senator:	
a. Jasper	35,282
b. Clinton	55,060
4. Two-county districts electing one Senator:	
a. Iowa (16,396), Poweshiek (19,300)	35,696
b. Cedar (17,791), Muscatine (33,840)	51,631

1. Number of constituents represented by each Senator.

5. Three-county districts electing one Senator:

   a. Davis (9,199), Jefferson (15,818), Van Buren (9,778) — 34,795

   b. Floyd (21,102), Mitchell (14,043), Butler (17,467) — 52,612

6. Four-county districts electing one Senator:

   a. Clarke (8,222), Decatur (10,539), Ringgold (7,910), Wayne (9,800) — 36,471

   b. Adams (7,468), Montgomery (14,467), Taylor (10,288), Union (13,712) — 45,935

The 17 most populous counties (Polk-Jasper) with 1,379,720 residents or 50% of Iowa's population comprise 17 senatorial districts in this redistricting plan. The 17 senatorial districts receive 29 of the 61 senate seats (47.54%) in this redistricting plan.

The 31 least populous districts (Davis-Jefferson-Van Buren-Webster), excluding districts in which more than one senator is elected, account for 1,281,811 residents or 46.48% of the population of the State. These 31 districts receive 31 of the 61 senate seats (50.82%) in this redistricting plan.

The 31 senators representing the least number of persons are elected from 27 districts (Davis-Jefferson-Van Buren-Fremont-Mills-Page). These 31 senators represent 1,244,076 or 45.115% (percentage of control) of the population of the State and comprise 50.82% of the membership of the Senate in this redistricting plan.

Population variance between the most populous senatorial district (Scott—59,534) and the least populous district (Davis-Jefferson-Van Buren—34,795)—1.71099:1.

APPENDIX D

Constitution of the State of Iowa

Article I.

Laws uniform. Sec. 6. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Article III.

Districts. Sec. 37. When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

Senators—number—method of apportionment. Sec. 34. The number of senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties according to the number of inhabitants in each.

Senators—representatives—number—apportionment—districts. Sec. 35. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State, according to the number of inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled

to one representative; and any one county containing in addition to the ratio fixed by law, one-half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed.

Ratio of representation. Sec. 36. At its first session under this Constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative.